

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PACIFIC EMPLOYMENT INSURANCE)
COMPANY,)
Plaintiff,)
)
)
-against-) NO. 1:11-CV-0912 (TJM/RFT)
)
)
TROY BELTING & SUPPLY COMPANY,))
THE HARTFORD INSURANCE COMPANY))
AND ABC COMPANIES 1 THROUGH))
20,))
)
Defendants.)

TROY BELTING & SUPPLY COMPANY,))
)
Third-Party Plaintiff,))
)
)
-against-))
)
UNIGARD INSURANCE COMPANY,))
QBE AMERICAS, INC., THE))
TRAVELERS COMPANIES, INC.,))
CNA FINANCIAL CORPORATION,))
FIREMAN'S FUND INSURANCE))
COMPANY, THE NORTH RIVER))
INSURANCE COMPANY, CRUM &))
FORSTER HOLDINGS CORP.,))
LIBERTY MUTUAL GROUP, INC.,))
HARLEYSVILLE GROUP, INC.,))
HARLEYSVILLE INSURANCE))
COMPANY, HARLEYSVILLE))
INSURANCE COMPANY OF NEW YORK,))
BERKSHIRE MUTUAL INSURANCE))
GROUP,))
)
Third-Party Defendants.)

ORAL DEPOSITION OF
JAMES E. O'MALLEY, JR.
JANUARY 26, 2016

<p style="text-align: right;">Page 2</p> <p>1 ORAL DEPOSITION OF JAMES E. O'MALLEY, JR.,</p> <p>2 produced as a witness at the instance of the DEFENDANTS,</p> <p>3 UNIGARD INSURANCE COMPANY AND QBE AMERICAS, INC., and duly</p> <p>4 sworn, was taken in the above-styled and numbered cause on</p> <p>5 the 26th day of January, 2016, from 10:15 a.m. to</p> <p>6 4:15 p.m., before Kathryn R. Baker, CSR, RPR, in and for</p> <p>7 the State of Texas, reported by machine shorthand, at the</p> <p>8 offices of Hyatt Regency North Dallas, 701 East Campbell</p> <p>9 Road, in the City of Richardson, State of Texas, pursuant</p> <p>10 to the Federal Rules of Civil Procedure.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 FOR THE THIRD-PARTY DEFENDANTS, THE NORTH RIVER INSURANCE COMPANY AND CRUM & FORSTER HOLDING CORP.:</p> <p>2 Ms. Carol Crumme O'CONNOR, O'CONNOR LAW FIRM</p> <p>3 20 Corporate Woods Boulevard Albany, New York 12211</p> <p>4 518-465-0400 crumme@oobf.com</p> <p>5 (Appearing telephonically)</p> <p>6</p> <p>7 FOR THE THIRD-PARTY DEFENDANTS, HARLEYSVILLE GROUP, INC., HARLEYSVILLE INSURANCE COMPANY, HARLEYSVILLE INSURANCE COMPANY OF NEW YORK, AND BERKSHIRE MUTUAL INSURANCE GROUP:</p> <p>8 Ms. Margriet A. Schaberg RIKER, DANZIG LAW FIRM</p> <p>9 Headquarters Plaza One Speedwell Avenue Morristown, New Jersey 07962-1981</p> <p>10 Post Office Box 1981 Morristown, New Jersey 07962-1981</p> <p>11 973-538-0800 mschaberg@riker.com</p> <p>12 (Appearing telephonically)</p> <p>13</p> <p>14 FOR THE THIRD-PARTY DEFENDANT, CONTINENTAL CASUALTY COMPANY:</p> <p>15 Ms. Joanna L. Young CARROLL, MCNULTY LAW FIRM</p> <p>16 120 Mountain View Boulevard Basking Ridge, New Jersey 07920</p> <p>17 908-848-6300 jyoung@cmk.com</p> <p>18 (Appearing telephonically)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4 Mr. Brian Fox SIEGAL & PARK LAW FIRM 533 Fellowship Road Suite 120 Mt. Laurel, New Jersey 08054 6 856-380-8900 brian.fox@mcclolaw.com</p> <p>7</p> <p>8 FOR THE DEFENDANT/THIRD-PARTY PLAINTIFF, TROY BELTING & SUPPLY COMPANY AND THE WITNESS:</p> <p>9 Mr. Timothy S. Brennan PHELAN, PHELAN & DANEK, LLP 10 300 Great Oaks Boulevard Suite 315 Albany, New York 12203 518-640-6900 12 tim@ppdlawfirm.com</p> <p>13</p> <p>14 FOR THE DEFENDANTS, UNIGARD INSURANCE COMPANY AND QBE AMERICAS, INC.:</p> <p>15 Mr. Michael A. Kotula RIVKIN RADLER, LLP 926 RXR Plaza Uniondale, New York 11556 516-357-3000 17 michael.kotula@rivkin.com</p> <p>18</p> <p>19 FOR THE DEFENDANTS, HARTFORD ACCIDENT & INDEMNITY COMPANY, HARTFORD CASUALTY INSURANCE COMPANY AND HARTFORD INSURANCE COMPANY:</p> <p>20 Mr. Charles E. Leasure, III SHIPMAN & GOODWIN, LLP 21 1875 K. Street NW Suite 600 Washington, D.C. 20006 202-469-7750 23 cleasure@goodwin.com</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 INDEX</p> <p>2 Appearances. 3</p> <p>3 Stipulations 8</p> <p>4 JAMES E. O'MALLEY, JR.</p> <p>5 Examination by Mr. Kotula . . . 8</p> <p>6 Examination by Mr. Leasure . . . 164</p> <p>7 Examination by Mr. Fox . . . 209</p> <p>8 Signature and Changes. 238</p> <p>9 Reporter's Certification . . . 240</p> <p>10</p> <p>11 EXHIBITS</p> <p>12 NO./DESCRIPTION PAGE</p> <p>13 Exhibit 1..... 8 Unigard Insurance Company's and QBE</p> <p>14 Americas, Inc.'s Notice to Take Deposition of James E. O'Malley</p> <p>15 Exhibit 2..... 37 Expert Report</p> <p>16 Exhibit 3..... 54 Amendment of Declaration Items 4 & 5</p> <p>17 Exhibit 4..... 57 Comprehensive General Liability Policy for</p> <p>18 Jamestown Mutual Insurance Company</p> <p>19 Exhibit 5..... 93 Deposition Excerpt of Michael Moran, Taken January 7, 2015</p> <p>20 Exhibit 6..... 97 November 16, 1977, Letter from Nicoll and</p> <p>21 MacChesney, Inc., to Troy Belting & Supply Company</p> <p>22 Exhibit 7..... 98 September 15, 1978, Letter from Nicoll and</p> <p>23 MacChesney, Inc., to Troy Belting & Supply Company</p> <p>24 Exhibit 8..... 100 January 3, 1978, Insurance Company of North America Memo</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 INDEX 2 (CONTINUED) 3 EXHIBITS 4 5 NO./DESCRIPTION PAGE 6 Exhibit 9..... 102 7 Deposition Excerpt of Peter Ranalli, Taken 8 June 23, 2015 9 Exhibit 10..... 110 10 August 11, 1978, Letter from Unigard to 11 James L. Dixon 12 Exhibit 11..... 111 13 August 21, 1978, Letter from Unigard to 14 Mr. William R. Field 15 Exhibit 12..... 113 16 Deposition Excerpt of William Field, Taken 17 June 30, 2015 18 Exhibit 13..... 120 19 Deposition Excerpt of Peter Ranalli, Taken 20 June 23, 2015 21 Exhibit 14..... 123 22 Rose M. Pennell vs. Johns Manville Sales Corp, 23 et al., Notice 24 Exhibit 15..... 126 25 Appendix Five, United States Fidelity and Guaranty Company, et al, vs. SOCO WEST, Inc., et al. Exhibit 16..... 139 Trail Testimony Excerpt of Mr. O'Malley Exhibit 17..... 145 January 18, 1977, Minutes of Directors Meeting Exhibit 18..... 149 Affidavit of James E. O'Malley in Support of Plaintiff's Argument on the Other Insurance Clause and in Opposition to Gluf Underwriters Insurance Company's Motion for Rule 11 Sanctions Exhibit 19..... 151 1194 WL 16067272 (C.A.5)(Appellate Brief) Exhibit 20..... 180 Commercial General Liability Coverage and Declaration</p>	<p style="text-align: right;">Page 8</p> <p>1 PROCEEDINGS 2 THE REPORTER: Any agreements? 3 MR. BRENNAN: Usual stipulations. We'd 4 like to review and sign. 5 JAMES E. O'MALLEY, JR., 6 having been first duly sworn, testified as follows: 7 EXAMINATION 8 BY MR. KOTULA: 9 Q. Good morning, Mr. O'Malley. 10 A. Morning. 11 Q. I represent the Defendants Unigard Insurance 12 Company and QBE Americas, Inc., in this case brought by 13 Troy Belting. 14 Would you be kind enough to state your full 15 name for the record for us. 16 A. James Edward O'Malley, Junior. 17 MR. KOTULA: Let's mark that as O'Malley 18 Exhibit 1. 19 (Exhibit 1 marked.) 20 Q. (BY MR. KOTULA) Sir, we placed before you what 21 the court reporter has kindly marked as O'Malley Exhibit 22 1. 23 MR. KOTULA: For the record, it is Unigard 24 Insurance Company and QBE Americas' notice to take 25 deposition of James O'Malley. It's dated December 4, 2005</p>
<p style="text-align: right;">Page 7</p> <p>1 REQUESTED DOCUMENTS/INFORMATION 2 (NONE) 3 4 CERTIFIED QUESTIONS 5 (NONE) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 9</p> <p>1 (sic). 2 Q. (BY MR. KOTULA) Have you ever seen this 3 document before? 4 A. I think so. It's been a while. 5 Q. Are you appearing today to give deposition 6 testimony pursuant to this deposition notice? 7 A. Yes. 8 Q. You were asked to produce, at the time of your 9 deposition, all books, records, and papers in your 10 custody, possession, or control that may be relevant to 11 the issues discussed in your expert report and any 12 materials you reviewed in preparing your report or in 13 forming your opinions. 14 Do you understand that? 15 A. Yes. 16 Q. And have you brought something for us here 17 today? 18 MR. BRENNAN: It's on disk. 19 A. Yes. 20 MR. BRENNAN: For the record, he has it on 21 disk; it's all digital. The list is the list that's in 22 his report. 23 MR. KOTULA: Is that something that I could 24 have? 25 MR. BRENNAN: Can he have that, or do we</p>

<p style="text-align: right;">Page 10</p> <p>1 need to make a copy?</p> <p>2 THE WITNESS: I guess he can have it. I</p> <p>3 don't know. It's got the --</p> <p>4 MR. BRENNAN: Can I make a copy and mail it</p> <p>5 out tomorrow morning? Fair enough?</p> <p>6 MR. KOTULA: Yep.</p> <p>7 Q. (BY MR. KOTULA) Are your billing statements on</p> <p>8 that disk, sir?</p> <p>9 A. No.</p> <p>10 Q. All right. Are your billing -- let me start --</p> <p>11 by whom are you currently employed?</p> <p>12 A. I'm an independent contractor, and I'm</p> <p>13 associated with Robert Hughes Associates in Richardson.</p> <p>14 Q. And Richardson is here in Texas, right?</p> <p>15 A. Yes. You're in Richardson right now.</p> <p>16 Q. Thank you. And what's the nature of your</p> <p>17 relationship or association with Robert Hughes Associates?</p> <p>18 A. I'm an associate there. I just office there and</p> <p>19 do work out of the Robert Hughes Associates offices.</p> <p>20 Q. And how long have you worked with Robert Hughes?</p> <p>21 A. About 25 years now. I think it was 1991 or</p> <p>22 something like that.</p> <p>23 Q. So you've been associated with Robert Hughes</p> <p>24 since about 1991?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 Mr. Hughes as to what Mr. Hughes was to opine on and what</p> <p>2 you were to opine on?</p> <p>3 A. Yes.</p> <p>4 Q. What's that division?</p> <p>5 A. Well, I was to opine on claims handling, and I</p> <p>6 don't know what -- I don't really know what Bob Hughes'</p> <p>7 role is. I haven't discussed it with him at all.</p> <p>8 Q. You haven't?</p> <p>9 A. No. I mean, I knew he was doing it, but I did</p> <p>10 not go into any detail at all.</p> <p>11 Q. In connection with your offering of opinions on</p> <p>12 claims handling, that's basically the nature of your</p> <p>13 assignment here?</p> <p>14 A. Yes.</p> <p>15 Q. In that regard, did you review all of the</p> <p>16 evidence of alleged policies that Troy Belting alleges</p> <p>17 were issued by Jamestown Mutual Insurance Company or</p> <p>18 Unigard Insurance Company?</p> <p>19 MR. BRENNAN: Objection.</p> <p>20 A. I did not see any of those policies.</p> <p>21 Q. (BY MR. KOTULA) Right. So let me -- that</p> <p>22 wasn't quite the question I was asking.</p> <p>23 But let me ask you: To your knowledge,</p> <p>24 does Troy Belting have copies of any of its insurance</p> <p>25 policies that were issued to it prior to 1974?</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Do you know, are your billing statements</p> <p>2 combined with Mr. Hughes' billing statements that go to</p> <p>3 Troy Belting or its counsel?</p> <p>4 A. You know, I don't know, because I don't really</p> <p>5 see the billing statements. I give them, you know, a</p> <p>6 record of what I've done, and then they produce it and</p> <p>7 send it on. I suspect that it might be, but I don't know.</p> <p>8 Q. You've never seen any of your billing</p> <p>9 statements?</p> <p>10 A. Yeah, I have seen some of them, but I haven't</p> <p>11 seen -- I haven't seen any in this particular case.</p> <p>12 Q. You haven't seen any in this matter --</p> <p>13 A. No.</p> <p>14 Q. -- or this employment by Troy Belting?</p> <p>15 A. No.</p> <p>16 Q. Do you understand that Mr. Robert Hughes has</p> <p>17 also offered expert opinions in this matter on behalf of</p> <p>18 Troy Belting?</p> <p>19 A. Yes.</p> <p>20 Q. Have you read his report?</p> <p>21 A. No.</p> <p>22 Q. Have you read his deposition transcript in this</p> <p>23 matter?</p> <p>24 A. No.</p> <p>25 Q. Is there a division of labor between you and</p>	<p style="text-align: right;">Page 13</p> <p>1 MR. BRENNAN: Objection.</p> <p>2 A. Not that I'm aware of, no.</p> <p>3 Q. (BY MR. KOTULA) So you haven't reviewed any</p> <p>4 insurance policies that were issued to Troy Belting by</p> <p>5 anyone prior to 1974; is that right?</p> <p>6 A. That's right.</p> <p>7 Q. And can we agree that an insurance policy is</p> <p>8 primary evidence of the policy itself?</p> <p>9 MR. BRENNAN: Objection.</p> <p>10 A. Well, that's primary evidence, yes. There's</p> <p>11 secondary evidence as well, of course.</p> <p>12 Q. (BY MR. KOTULA) Right. And I'll get to that.</p> <p>13 A. Yeah.</p> <p>14 Q. But the primary evidence of the policy is the</p> <p>15 policy itself, correct?</p> <p>16 A. Yes.</p> <p>17 Q. And is the policy itself the best evidence of</p> <p>18 what the agreements of the insurance company were?</p> <p>19 MR. BRENNAN: Objection; asked and</p> <p>20 answered.</p> <p>21 A. Well, obviously, it is the evidence. But, I</p> <p>22 mean, it can be reconstructed through other secondary</p> <p>23 evidence.</p> <p>24 Q. (BY MR. KOTULA) Right. But is it the best</p> <p>25 evidence?</p>

<p style="text-align: right;">Page 14</p> <p>1 MR. BRENNAN: Objection.</p> <p>2 A. Of course.</p> <p>3 Q. (BY MR. KOTULA) So Troy doesn't have any of</p> <p>4 the policies prior to 1974, as far as you know, right?</p> <p>5 MR. BRENNAN: Objection.</p> <p>6 A. As far as I know, no.</p> <p>7 Q. (BY MR. KOTULA) Now, have you testified as a</p> <p>8 lost policy expert before?</p> <p>9 A. No, I don't think I've ever had any testimony</p> <p>10 about that. And, you know, I've been in over 300 cases,</p> <p>11 and I -- you know, it's possible that there was some</p> <p>12 somewhere, and I had some testimony about it, but I don't</p> <p>13 recall any.</p> <p>14 Q. So you don't recall ever having been retained to</p> <p>15 serve as a lost policy expert?</p> <p>16 A. No.</p> <p>17 Q. And have you been retained as a lost policy</p> <p>18 expert in this case?</p> <p>19 MR. BRENNAN: Object to form.</p> <p>20 A. No.</p> <p>21 Q. (BY MR. KOTULA) Okay. Have you been asked to</p> <p>22 opine about what secondary evidence there is of alleged</p> <p>23 policies that may have been issued to Troy Belting?</p> <p>24 MR. BRENNAN: Objection. You have his</p> <p>25 report.</p>	<p style="text-align: right;">Page 16</p> <p>1 case. So, I mean, I don't know that I can describe each</p> <p>2 particular one.</p> <p>3 Q. Are you offering opinions in this matter on the</p> <p>4 basis of secondary evidence apart from claims</p> <p>5 correspondence?</p> <p>6 MR. BRENNAN: Object to the form.</p> <p>7 A. Well, I mean, that's basically what I looked at</p> <p>8 was, you know, the claims correspondence and the</p> <p>9 correspondence from the agency and, you know, saying that</p> <p>10 they had -- in particular, Unigard and Jamestown, they had</p> <p>11 coverage prior to that period of time, '74.</p> <p>12 Q. (BY MR. KOTULA) So what I'm trying to get at</p> <p>13 is: Are you going to rely on secondary evidence besides</p> <p>14 this claims correspondence from either a broker or an</p> <p>15 agent and Pacific Employers and Unigard?</p> <p>16 MR. BRENNAN: Object to the form. He's got</p> <p>17 a list of the documents he's considered, and it's been</p> <p>18 provided to counsel. It's not a memory test.</p> <p>19 Q. (BY MR. KOTULA) You can answer.</p> <p>20 A. Yeah. Everything that I looked at, ledgers, you</p> <p>21 know, and the chart and everything, that's all part of my</p> <p>22 opinion.</p> <p>23 Q. You're relying on all of that?</p> <p>24 A. All of that, yes.</p> <p>25 Q. Are you aware of any evidence in this case that</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Well, I've looked at the secondary evidence and,</p> <p>2 you know, what was involved as far as correspondence and</p> <p>3 that sort of thing.</p> <p>4 Q. (BY MR. KOTULA) Okay. Can you broadly</p> <p>5 describe for us the secondary evidence that you looked at?</p> <p>6 A. Of course. Are you talking about Unigard; is</p> <p>7 that who you're referring to?</p> <p>8 Q. About any missing policies or alleged policies</p> <p>9 that Troy alleges were issued to it prior to 1974.</p> <p>10 MR. BRENNAN: Objection.</p> <p>11 A. The secondary evidence that I saw was, of</p> <p>12 course, correspondence between the agent and Unigard and</p> <p>13 Pacific Employers, basically.</p> <p>14 MR. KOTULA: Could you read that back?</p> <p>15 (The requested portion was read.)</p> <p>16 A. There were also -- I'm sorry. There's also some</p> <p>17 archeology people that have put together a chart that</p> <p>18 shows Jamestown and Unigard.</p> <p>19 Q. (BY MR. KOTULA) And you looked at that?</p> <p>20 A. Yes. I looked at the chart, yes.</p> <p>21 Q. Did you look at ledger entries?</p> <p>22 A. Yes.</p> <p>23 Q. Did you look at expense account documents?</p> <p>24 A. I don't recall expense account documents. There</p> <p>25 may have been. I looked at hundreds of documents in this</p>	<p style="text-align: right;">Page 17</p> <p>1 documents that Jamestown Mutual Insurance Company issued a</p> <p>2 comprehensive general liability policy to Troy Belting?</p> <p>3 A. Well, only by the secondary evidence. I see</p> <p>4 that they were interested in the asbestos claims in the</p> <p>5 Pennell file. And, obviously, they would have had some</p> <p>6 kind of a liability policy, and they would have been</p> <p>7 interested in getting the pleadings, getting the medical.</p> <p>8 Q. Aside from the correspondence regarding the</p> <p>9 Pennell file, are you aware of any evidence that Jamestown</p> <p>10 Mutual issued a comprehensive general liability policy to</p> <p>11 Troy Belting at any time?</p> <p>12 MR. BRENNAN: Object to form.</p> <p>13 A. That's all I have is the secondary evidence.</p> <p>14 Q. (BY MR. KOTULA) And strictly the claims</p> <p>15 correspondence regarding the Pennell claim; is that right?</p> <p>16 MR. BRENNAN: Objection as to form.</p> <p>17 A. That's right. And, also, I think there's a --</p> <p>18 there was a claim that was -- I can't remember the lady's</p> <p>19 name. Her hair was caught in a pulley or something like</p> <p>20 that.</p> <p>21 Q. (BY MR. KOTULA) Is that the Dario case?</p> <p>22 A. I believe that was the name of it.</p> <p>23 Q. So aside from the Pennell and Dario claims</p> <p>24 correspondence, are you aware of any evidence that</p> <p>25 Jamestown Mutual Insurance Company issued a comprehensive</p>

<p style="text-align: right;">Page 18</p> <p>1 general liability policy to Troy Belting?</p> <p>2 A. No, that's -- that's --</p> <p>3 MR. BRENNAN: Objection, form.</p> <p>4 A. My opinion is formed by the secondary evidence</p> <p>5 that I saw in the claims files and correspondence.</p> <p>6 Q. (BY MR. KOTULA) To your knowledge, is there</p> <p>7 any evidence of any policy number of any alleged Jamestown</p> <p>8 Mutual Insurance Company policy issued to Troy Belting?</p> <p>9 A. I think there was an indication of a policy</p> <p>10 number, but I think people couldn't trace it down. I</p> <p>11 can't recall whether it was Jamestown or Unigard's.</p> <p>12 Q. Do you know, does Troy Belting allege that</p> <p>13 Jamestown Mutual issued policies to Troy Belting, or does</p> <p>14 it allege that Unigard issued policies to Troy Belting?</p> <p>15 MR. BRENNAN: Objection.</p> <p>16 A. Well, I think that it was initially Jamestown.</p> <p>17 At what point, I don't know, that Unigard came on. I</p> <p>18 think that they apparently are in that area somewhere.</p> <p>19 I'm not aware of the exact policy period. But it's my</p> <p>20 understanding that Unigard bought Jamestown and took over</p> <p>21 all of their liabilities.</p> <p>22 Q. (BY MR. KOTULA) What's your understanding</p> <p>23 about what Troy Belting alleges who was the issuing</p> <p>24 company of these alleged policies?</p> <p>25 A. My understanding, it was Jamestown.</p>	<p style="text-align: right;">Page 20</p> <p>1 one on their own. So, I mean, that's all I can go by.</p> <p>2 Q. (BY MR. KOTULA) And you don't have any other</p> <p>3 information about that, right?</p> <p>4 A. No.</p> <p>5 Q. So if Unigard was a successor to Jamestown</p> <p>6 Mutual, then Unigard would be corresponding with respect</p> <p>7 to claims under alleged Jamestown Mutual policies,</p> <p>8 correct?</p> <p>9 MR. BRENNAN: Objection.</p> <p>10 A. Yes.</p> <p>11 Q. (BY MR. KOTULA) And that wouldn't indicate</p> <p>12 that Unigard Insurance Company itself issued any policy to</p> <p>13 Troy Belting, right?</p> <p>14 MR. BRENNAN: Objection.</p> <p>15 A. No, not specifically. My only recollection is</p> <p>16 there's something about a policy period in there that</p> <p>17 Unigard was on. I might be mistaken. It doesn't matter</p> <p>18 if they take over Jamestown; it's the same thing. So</p> <p>19 whether they had a policy or didn't have a policy,</p> <p>20 Jamestown and Unigard are the same.</p> <p>21 Q. (BY MR. KOTULA) Well, since Troy Belting is</p> <p>22 alleging that it's entitled to coverage under 25 years of</p> <p>23 missing policies that it doesn't have to show in support</p> <p>24 of its claim, I think we need to be precise as to names of</p> <p>25 companies that are alleged to have issued policies and</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. So it's Troy Belting's allegation that Jamestown</p> <p>2 Mutual, and not Unigard Insurance Company, issued policies</p> <p>3 that are alleged in this case?</p> <p>4 MR. BRENNAN: Objection.</p> <p>5 A. What I'm saying is that there may have been --</p> <p>6 at the tail end of that period, there may have been a</p> <p>7 Unigard policy itself. I don't recall it specifically.</p> <p>8 Q. (BY MR. KOTULA) Are you aware of any evidence</p> <p>9 that Unigard itself issued a policy; not as Jamestown, but</p> <p>10 as Unigard?</p> <p>11 A. No.</p> <p>12 MR. BRENNAN: Objection, form.</p> <p>13 A. Other than what the secondary evidence might</p> <p>14 show as far as who was on it at that time. I think there</p> <p>15 was a period of time that, I think, they were on it. I</p> <p>16 can't recall specifically, though, what policy period.</p> <p>17 Q. (BY MR. KOTULA) Is there any secondary</p> <p>18 evidence that Unigard Insurance Company itself, and not as</p> <p>19 a successor to Jamestown Mutual Insurance Company, issued</p> <p>20 any policy to Troy Belting?</p> <p>21 MR. BRENNAN: Objection.</p> <p>22 A. Well, the only thing is, is they were</p> <p>23 corresponding back and forth to Pacific Employers through</p> <p>24 Unigard, and Unigard corresponds. So I have to assume</p> <p>25 that either they were taking it to Jamestown or they had</p>	<p style="text-align: right;">Page 21</p> <p>1 names of companies that are associated with secondary</p> <p>2 evidence.</p> <p>3 So I understand your statement that, from a</p> <p>4 legal standpoint, Unigard might be a successor to any</p> <p>5 liabilities of Jamestown Mutual.</p> <p>6 A. Yeah.</p> <p>7 Q. But I would ask that we differentiate and be</p> <p>8 specific about which company specifically was associated</p> <p>9 with secondary evidence.</p> <p>10 A. Yeah.</p> <p>11 MR. BRENNAN: Objection.</p> <p>12 A. The only thing I can tell you is that I thought</p> <p>13 I saw something either on the archeology printout or</p> <p>14 somewhere that Unigard was in a policy period. I might be</p> <p>15 mistaken; I don't know.</p> <p>16 Q. (BY MR. KOTULA) And that's the only thing you</p> <p>17 can think of is --</p> <p>18 A. That's the only thing I can think of right now,</p> <p>19 yes.</p> <p>20 Q. -- is an Insurance Archaeology Group document?</p> <p>21 A. Yeah.</p> <p>22 Q. Is that right?</p> <p>23 A. Yes.</p> <p>24 MR. BRENNAN: Objection.</p> <p>25 Q. (BY MR. KOTULA) Are you aware of any secondary</p>

<p style="text-align: right;">Page 22</p> <p>1 evidence that exists that indicates what policy limits 2 were in place from 1949 to 1974 under alleged missing 3 policies? 4 MR. BRENNAN: Objection; beyond the scope. 5 A. No, I do not. 6 Q. (BY MR. KOTULA) And are you aware of any 7 secondary evidence that relates to alleged policy periods 8 of alleged missing policies from 1949 to 1974? 9 MR. BRENNAN: Objection. 10 A. Only by the Archaeology printout on the chart 11 that there were different policy periods, is the only 12 thing I recall. 13 Q. (BY MR. KOTULA) And as I recall, that document 14 had asterisks next to all of the policy periods for 15 Jamestown Mutual, and said that those were assumed dates; 16 did it not? 17 MR. BRENNAN: Objection. 18 A. Yes, it did. 19 Q. (BY MR. KOTULA) So that document itself 20 pointed out that that was a fiction, correct? 21 MR. BRENNAN: Objection. 22 A. Pointed out that it was a fiction? 23 Q. (BY MR. KOTULA) Yes, sir. 24 A. No. I don't think it's a fiction, no. 25 Q. An assumed date means they don't have evidence</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Well, I was -- I suspect -- I think Bob Hughes 2 recommended me to Tim Brennan's firm. And they called me 3 and asked me if I would be interested in looking at it. I 4 think that's how, initially, I was involved in it. 5 Q. Did you enter a separate signed agreement with 6 Troy Belting or its attorneys? 7 A. I don't enter into signed agreements; that's 8 Robert Hughes Associates that does that. I'm not sure 9 whether they did a separate one or not. 10 Q. Is it your belief that there is a written 11 agreement regarding your retention as an expert by Troy 12 Belting or its attorneys in this case? 13 A. I suspect there is. I mean, there's some 14 agreement. I don't know if it's written or not. 15 Q. Can you tell us, once you were recommended to 16 serve as an expert on behalf of Troy Belting, what, if 17 anything, you did next? 18 A. Well, they sent me some documents, and I 19 reviewed depositions and documents that were sent to me. 20 Q. Who sent you documents? 21 A. Tim Brennan's firm. 22 Q. And Tim Brennan is representing you here today 23 as counsel, correct? 24 A. Yes. 25 Q. And he represents Troy Belting, to your</p>
<p style="text-align: right;">Page 23</p> <p>1 of it; does it not? 2 MR. BRENNAN: Objection. 3 A. May not have hard evidence of it, but they had 4 some evidence of it or they wouldn't have had it down 5 there. 6 Q. (BY MR. KOTULA) Do you know what evidence they 7 had? 8 MR. BRENNAN: Objection. 9 A. I didn't go through all the Archaeology files. 10 I mean, it was that thick (indicating). 11 Q. (BY MR. KOTULA) Didn't the document say what 12 the source evidence was in a separate column? Didn't the 13 insurance Archaeology document you're thinking of source 14 it? 15 A. I think it did, yes. 16 Q. Okay. So whatever source documents were 17 indicated, that's your understanding of what the basis for 18 that is, right? 19 A. Yes. 20 Q. And you're not aware of anything besides that? 21 MR. BRENNAN: Objection. 22 A. No. 23 Q. (BY MR. KOTULA) Can you explain the 24 circumstances of how you were retained as an expert by 25 Troy Belting & Supply Company in this case?</p>	<p style="text-align: right;">Page 25</p> <p>1 understanding, correct? 2 A. Yes. 3 Q. So Tim Brennan and his firm sent you documents 4 to review in connection with your retention as an expert? 5 A. Yes. 6 Q. And what did he send you? 7 A. Several depositions in the Pennell case and some 8 documents on the Archaeology people. 9 Q. That's Insurance Archaeology Group? 10 A. Yes. 11 Q. And he sent you correspondence from the Pennell 12 case? 13 A. Yeah, the Pennell case. 14 Q. Do you recall which depositions you reviewed? 15 A. I can't remember all of them, but Ranalli and 16 Fields and Barcum and several others, but I don't have 17 them on the tip of my tongue. 18 Q. Did you personally review those depositions? 19 A. Pardon me? 20 Q. Did you personally review the depositions? 21 A. Oh, yeah. 22 Q. And the exhibits? 23 A. Oh, yes. 24 Q. Did you make any written product from your 25 review of those depositions?</p>

<p style="text-align: right;">Page 26</p> <p>1 A. Well, I made the report that I made.</p> <p>2 Q. Other than your expert report, did you make any</p> <p>3 other written product?</p> <p>4 A. No.</p> <p>5 Q. Or notes?</p> <p>6 A. No.</p> <p>7 Q. Did you also review all the exhibits to the</p> <p>8 depositions?</p> <p>9 A. Pardon me?</p> <p>10 Q. Did you review all the deposition exhibits as</p> <p>11 well?</p> <p>12 A. Yes.</p> <p>13 Q. Did you meet with anyone to discuss your</p> <p>14 retention?</p> <p>15 A. Visited with Tim over the phone, and that's</p> <p>16 about all.</p> <p>17 Q. And when did you visit with Tim on the phone?</p> <p>18 A. Sometime after I had gotten the depositions; I'm</p> <p>19 not quite sure when that was. I left for Lima, Peru, in</p> <p>20 the first -- right after -- just before Christmas, and I</p> <p>21 had talked to him at that time, just before Christmas.</p> <p>22 Q. Just before Christmas of 2015?</p> <p>23 A. Right.</p> <p>24 Q. So sometime in December of 2015, you spoke with</p> <p>25 Tim?</p>	<p style="text-align: right;">Page 28</p> <p>1 be here. And I talked to him sometime in December to tell</p> <p>2 him that I wasn't going to be here. We basically talked</p> <p>3 about the case and about my report and so forth. And I</p> <p>4 probably talked to him more than one time.</p> <p>5 Q. How long did you speak to him?</p> <p>6 A. I don't know. 15 minutes, maybe. I don't</p> <p>7 remember.</p> <p>8 Q. It was a brief call?</p> <p>9 A. Pardon me?</p> <p>10 Q. It was a brief call?</p> <p>11 A. Well, at that time, yes. I'm not saying that</p> <p>12 was the only time I've talked to him. I mean, I talked to</p> <p>13 him before the report and after he received the report and</p> <p>14 that sort of thing, but briefly about what it was about</p> <p>15 and that sort of thing.</p> <p>16 Q. And what, if anything, did you do to prepare for</p> <p>17 your deposition today?</p> <p>18 A. I went back through all the depositions and the</p> <p>19 exhibits, spoke with Tim some.</p> <p>20 Q. Did you meet with Tim?</p> <p>21 A. No. Because of the -- we had decided to meet</p> <p>22 yesterday, but because he couldn't get out of the airport,</p> <p>23 we did it over the phone.</p> <p>24 Q. And how long did you speak with him over the</p> <p>25 phone?</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Yeah.</p> <p>2 Q. Did you speak with Tim in preparing your expert</p> <p>3 report?</p> <p>4 A. No, not necessarily. I mean, I talked to him</p> <p>5 about what I was going to do, but I didn't -- what I was</p> <p>6 going to say.</p> <p>7 Q. So you spoke with him --</p> <p>8 A. Yeah, I told him --</p> <p>9 Q. -- about what you were going to opine about --</p> <p>10 A. Yeah.</p> <p>11 Q. -- in your report --</p> <p>12 A. Right.</p> <p>13 Q. -- prior to issuing the report, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And then this call you had with Tim in December</p> <p>16 of 2015, was that in connection with preparing the report</p> <p>17 or was that in connection with preparing for a deposition</p> <p>18 in this case?</p> <p>19 A. No, I think the report was -- what was -- I</p> <p>20 can't remember what the time -- it was September. Yeah,</p> <p>21 it was September.</p> <p>22 Q. So what was the purpose of the call in December</p> <p>23 of 2015?</p> <p>24 A. Just to tell him -- actually, they had set the</p> <p>25 deposition on the 7th of January, which I wasn't going to</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Well, one of our associates had passed away at</p> <p>2 Robert Hughes Associates, and we had a funeral yesterday</p> <p>3 as well. So I talked to Tim about an hour in the morning,</p> <p>4 something like that, and probably an hour-and-a-half or</p> <p>5 something in the afternoon.</p> <p>6 Q. This was yesterday?</p> <p>7 A. Yes.</p> <p>8 Q. Sir, are you an attorney?</p> <p>9 A. No.</p> <p>10 Q. Did you go to law school?</p> <p>11 A. Yes.</p> <p>12 Q. For how long?</p> <p>13 A. One year.</p> <p>14 Q. Did you receive a law degree?</p> <p>15 A. No.</p> <p>16 Q. Why did you not complete law school?</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 A. Well --</p> <p>19 THE WITNESS: Did you say something?</p> <p>20 MR. BRENNAN: No, go ahead. I said</p> <p>21 "objection."</p> <p>22 Go ahead.</p> <p>23 A. Well, I had gotten married, and I really needed</p> <p>24 a job, so I went to work for Northwestern Mutual Insurance</p> <p>25 Company, who later became Unigard. And I was married, and</p>

<p style="text-align: right;">Page 30</p> <p>1 we were having children.</p> <p>2 Q. (BY MR. KOTULA) So do I understand your</p> <p>3 testimony correctly that you have never served as a lost</p> <p>4 policy expert in your entire career?</p> <p>5 MR. BRENNAN: Objection.</p> <p>6 A. I don't recall that. I mean, as a -- it might</p> <p>7 have been a side thing somewhere, but I never have done it</p> <p>8 as primary.</p> <p>9 Q. (BY MR. KOTULA) Have you ever been an</p> <p>10 underwriter?</p> <p>11 A. I was in charge of the underwriting department,</p> <p>12 but I was not a desk underwriter.</p> <p>13 Q. And has a court ever recognized you as a lost</p> <p>14 policy expert, to your knowledge?</p> <p>15 A. Not that I -- no.</p> <p>16 Q. Do you have an understanding about who has the</p> <p>17 burden of proving a lost or missing policy?</p> <p>18 MR. BRENNAN: Objection.</p> <p>19 A. Well, I think it's a team effort as to, you</p> <p>20 know, who the carrier might be, the agent, and the</p> <p>21 policyholder.</p> <p>22 Q. (BY MR. KOTULA) So, wait. Who has the burden</p> <p>23 of proving --</p> <p>24 A. I think it's a team effort to find out how...</p> <p>25 Q. And who's part of that team?</p>	<p style="text-align: right;">Page 32</p> <p>1 and the carrier that they're alleging has the policy.</p> <p>2 Q. (BY MR. KOTULA) Is it your opinion that the</p> <p>3 insurance agent of a party claiming coverage under a lost</p> <p>4 or missing policy has the burden of proving the existence</p> <p>5 and the terms of the lost or missing policy?</p> <p>6 MR. BRENNAN: Objection.</p> <p>7 A. Well, he's one of the partners in the thing. I</p> <p>8 mean, he has -- obviously, he's got records.</p> <p>9 Q. (BY MR. KOTULA) And is it your testimony and</p> <p>10 opinion that the alleged insurance company that issued the</p> <p>11 lost or missing policy has the burden of proving the</p> <p>12 existence and the terms of the missing policy?</p> <p>13 MR. BRENNAN: Objection.</p> <p>14 A. They're one of the parties that needs to look at</p> <p>15 their own records, certainly, when there's an allegation.</p> <p>16 Q. (BY MR. KOTULA) So is that a yes?</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 A. Yes.</p> <p>19 Q. (BY MR. KOTULA) So it's your belief that a</p> <p>20 number of parties have the burden of proving the existence</p> <p>21 and terms of a lost or missing insurance policy, and they</p> <p>22 include the party seeking coverage, the insurance agent,</p> <p>23 and the insurance company that allegedly issued the</p> <p>24 policy?</p> <p>25 MR. BRENNAN: Object to the form.</p>
<p style="text-align: right;">Page 31</p> <p>1 A. Well, you have the policyholder; you have the</p> <p>2 agent; you have the insurance carrier.</p> <p>3 MR. BRENNAN: I think you guys are on a</p> <p>4 different page, Mike.</p> <p>5 Q. (BY MR. KOTULA) So I'm not going to call a</p> <p>6 party a policyholder, because that assumes the conclusion</p> <p>7 of the dispute. In other words, if there's a dispute over</p> <p>8 whether a policy was issued to them, calling them a</p> <p>9 policyholder assumes that there was, in fact, a policy.</p> <p>10 So I'm going to refer to that entity as the party claiming</p> <p>11 coverage.</p> <p>12 Will you understand me when I say -- refer</p> <p>13 to them as the party claiming coverage?</p> <p>14 A. Yeah. Or Troy Belting; whatever you want to</p> <p>15 say. I don't know. Whatever.</p> <p>16 Q. Let's refer to someone who's seeking coverage</p> <p>17 under a lost or missing policy as the party seeking</p> <p>18 coverage, okay?</p> <p>19 A. Okay.</p> <p>20 Q. Do you have an understanding that a party</p> <p>21 seeking coverage under a lost or missing policy has the</p> <p>22 burden of proving that policy?</p> <p>23 MR. BRENNAN: Objection.</p> <p>24 A. Well, certainly, they are involved in it.</p> <p>25 There's other people involved in it as well; the agency</p>	<p style="text-align: right;">Page 33</p> <p>1 A. Yeah. I think it's a combination of those</p> <p>2 people that need to look and see whether there is coverage</p> <p>3 if there's an allegation by the policyholder that there is</p> <p>4 some coverage, yes. All of those people need to be</p> <p>5 involved.</p> <p>6 Q. (BY MR. KOTULA) Do you know, in a court of</p> <p>7 law, who the Court places the burden of proving the</p> <p>8 existence of the terms of an alleged or missing policy</p> <p>9 upon?</p> <p>10 MR. BRENNAN: Objection.</p> <p>11 A. No. I'm not a lawyer. I don't know who they</p> <p>12 are or are not.</p> <p>13 Q. (BY MR. KOTULA) You don't know that?</p> <p>14 A. No.</p> <p>15 Q. So you don't know any standards that may apply</p> <p>16 to proving a lost or missing policy?</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 A. No. I don't have that legal -- it wasn't my --</p> <p>19 it wasn't my role in this case.</p> <p>20 Q. (BY MR. KOTULA) Do you know whether courts</p> <p>21 require a party claiming coverage to prove a lost or</p> <p>22 missing policy by clear and convincing evidence or a</p> <p>23 preponderance of the evidence?</p> <p>24 MR. BRENNAN: Objection.</p> <p>25 A. No, I don't know that. I don't know what the</p>

<p style="text-align: right;">Page 34</p> <p>1 legal standard is. All I know is what I see in the 2 Pennell file, particularly, that Unigard certainly had a 3 role, and it appears obvious that they had coverage at 4 some point. 5 Q. (BY MR. KOTULA) Okay. We'll get to that. 6 That wasn't my question, but we'll get to that. 7 Do you have an understanding that a party 8 seeking coverage under a lost or missing policy has a 9 burden to demonstrate that the policy existed? 10 MR. BRENNAN: Objection. 11 A. They're one of the ones. Like I said before, I 12 mean, obviously, they tried to demonstrate. They tried to 13 demonstrate through their ledgers, through their agent, 14 through anything that they could reconstruct, yes. 15 Q. (BY MR. KOTULA) Okay. I'm not asking about 16 Troy now; I'm asking just a general question. 17 A. Oh. 18 Q. So you believe that a party seeking coverage has 19 a role -- I think is what you said -- as part of a team 20 effort in proving the existence of an alleged lost or 21 missing policy, correct? 22 MR. BRENNAN: Objection. 23 A. Yes. 24 Q. (BY MR. KOTULA) But you also believe that that 25 party's insurance agent has a role as part of a team</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Okay. Again, that wasn't an answer to my 2 question. I was asking a general question, not about Troy 3 Belting. We will get to Troy Belting. But that's -- you 4 didn't answer my question, is all I'm saying. I was 5 asking you a general question. 6 MR. BRENNAN: Do you want to read back the 7 question? 8 THE WITNESS: Please. 9 (The requested portion was read.) 10 Q. (BY MR. KOTULA) That was my question. It was 11 a general question, not about Troy Belting. 12 A. I thought I said "no," but I went on to tell... 13 Q. After you said "no," you weren't answering my 14 question is all I'm saying. 15 A. Okay. 16 MR. BRENNAN: Objection. 17 MR. KOTULA: So I move to strike that. 18 Q. (BY MR. KOTULA) Do you know who has the burden 19 of proving the terms of an alleged lost or missing policy? 20 MR. BRENNAN: Objection. 21 A. Well, again, you know, whatever -- if it's a -- 22 in this particular case, and that's the only one I'm 23 familiar with, obviously, if it's -- there's evidence that 24 there's liability coverage and then there's a 25 comprehensive general liability coverage, I mean, it's</p>
<p style="text-align: right;">Page 35</p> <p>1 effort in proving the existence of a lost or missing 2 policy? 3 MR. BRENNAN: Objection. 4 A. Certainly, they have -- you know, they should be 5 helpful in providing that information, if they have it. 6 Which, in this particular case, they did. 7 Q. (BY MR. KOTULA) And you also believe that an 8 insurance company that is alleged to have issued a lost or 9 missing policy has a role to play, as part of a team 10 effort, in proving the existence of an alleged lost or 11 missing policy? 12 MR. BRENNAN: Objection. 13 A. Yes. They need to go back through their 14 records. 15 Q. (BY MR. KOTULA) And you don't know whether 16 courts agree with what you just testified about as to who 17 has the burden of proving the existence of an alleged lost 18 or missing policy -- 19 MR. BRENNAN: Objection. 20 Q. (BY MR. KOTULA) -- correct? 21 A. I don't know the legal standard on that, no. 22 What I'm saying is, from my review of the documents, it's 23 very obvious that Unigard had some liability coverage and 24 that they should -- they were on the policy, either 25 through their own or through Jamestown.</p>	<p style="text-align: right;">Page 37</p> <p>1 pretty evident what the terms are going to be. 2 Q. (BY MR. KOTULA) Okay. I wasn't asking about 3 this case; I was asking as a general proposition. 4 Are you aware of which party has the burden 5 of proving the alleged terms of a lost or missing policy? 6 MR. BRENNAN: Objection. 7 A. Well, obviously, the primary one would be the 8 policyholder, or the alleged policyholder, as you said. 9 But as I also reiterated, it's a team effort between the 10 policyholder, what the agent said he wrote, and what the 11 alleged -- or what the insurance carrier has. 12 Q. (BY MR. KOTULA) And you don't know whether a 13 court agrees with that as the proper legal standard in a 14 court of law, right? 15 MR. BRENNAN: Objection. 16 A. I don't know the legal standard to that, no. 17 Q. (BY MR. KOTULA) Okay. 18 MR. KOTULA: Mark that as Exhibit 2. 19 (Exhibit 2 marked.) 20 MR. KOTULA: For the record, Exhibit 2 21 is an October 1, 2015, correspondence from Marta Bruner, 22 administrative assistant to Mr. Timothy Brennan, 23 at Phelan, Phelan & Danek, LLP, attaching a 24 September 30, 2015, letter report from James O'Malley, 25 Junior, to Timothy Brennan in the matter of Pacific</p>

<p style="text-align: right;">Page 38</p> <p>1 Employers Insurance Company vs. Troy Belting & Supply 2 Company. 3 Q. (BY MR. KOTULA) Have you ever seen Exhibit 2, 4 sir? 5 A. This is my report? 6 Q. Yes, it is. 7 A. Yes, I have. 8 Q. And does it appear to you to be a true and 9 complete copy of your expert report in this matter? 10 A. It appears to be, yes. 11 Q. In offering your opinions about whether 12 Jamestown Mutual or Unigard Insurance Company issued lost 13 or missing policies to Troy Belting, did you consider 14 whether the evidence in this case meets a clear and 15 convincing evidence standard? 16 MR. BRENNAN: Objection. 17 A. To me, it did, yes. 18 Q. (BY MR. KOTULA) Did you consider that in 19 forming your opinion? 20 A. Of course. I looked at the information, 21 documents. Very obvious that they had liability 22 insurance. 23 Q. (BY MR. KOTULA) Okay. What's "liability 24 insurance"? 25 A. What do you mean?</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. An M&C policy. 2 A. Yes. 3 Q. And those are all forms of liability policies, 4 correct? 5 A. Yes. 6 Q. If someone says they have a liability insurance 7 policy, do you know which kind of liability insurance 8 policy they have? 9 A. Not unless they tell me, no. 10 Q. It could be any of those, correct? 11 A. It could be. 12 Q. And if someone says they have liability 13 insurance coverage, is that another way of saying that 14 they have a liability insurance policy? 15 A. I would think so, yes. 16 MR. BRENNAN: Objection. 17 Q. (BY MR. KOTULA) Now, referring you to Exhibit 18 2, which is your expert report in this case, do you have 19 any opinions in this matter that have not been set forth 20 in O'Malley Exhibit 2, your expert report? 21 A. No. 22 Q. So you're not going to offer any opinions that 23 aren't already set forth somewhere in your expert report 24 that we've marked as Exhibit 2, correct? 25 MR. BRENNAN: Objection.</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. What is it? You just used the phrase -- 2 A. It's an agreement. It's a policy that has an 3 insuring agreement that agrees to protect the policyholder 4 from any claims made against it, generally. I mean, 5 that's it generally. 6 Q. And is there only one type of liability 7 insurance policy? 8 A. No. 9 Q. What types of liability insurance policies are 10 there, to your knowledge? 11 A. Automobile liability; there's comprehensive 12 general liability; there's -- I don't know. There's 13 several. 14 Q. Any others that you can think of? 15 A. There's manufacturers and contractors. 16 Q. Any others? 17 A. Not off the top of my head. I mean, I can't 18 think of any right now. There's personal liability; 19 there's umbrellas, and all kinds of stuff. 20 Q. Have you ever heard of an owners, landlords, and 21 tenants policy, or an OLT policy? 22 A. Yes. 23 Q. And a manufacturers and contractors liability 24 policy, is that also known as an M&C policy? 25 A. Known as what?</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Unless I am asked to, and given additional 2 documentation, no, that's what I'm -- that's what I intend 3 to testify about. 4 Q. (BY MR. KOTULA) Have you been given any 5 additional fact information or documents since you issued 6 this report September 30, 2015, in this case? 7 A. No. 8 Q. And that's true as to anybody? No one of any 9 sort has given you any additional fact information or 10 documents, correct? 11 A. No. 12 Q. So no one has? 13 A. No. No, they haven't. 14 Q. Sometimes -- 15 A. Okay. 16 Q. -- you say "no," and it's not clear that we're 17 agreeing. 18 You're agreeing with me, you haven't 19 received any additional fact information or documents 20 prior to -- after September 30th, right? 21 A. Right. 22 MR. FOX: When there's a good chance, can 23 we take a quick break? 24 MR. KOTULA: Sure. We can take a break 25 right now.</p>

<p style="text-align: right;">Page 42</p> <p>1 (Recess in the proceedings from 11:00 to 2 11:06 a.m.) 3 Q. (BY MR. KOTULA) Sir, we're back on the record. 4 Can you tell us approximately how much time 5 you spent reviewing materials and preparing your opinions 6 in your expert report in this matter? 7 A. Up to this review here, about 40 to 50 hours; 8 something like that, 60 hours. I don't know what it's 9 been the last three or four days; I've been kind of 10 looking at stuff. 11 Q. So 50, 60 hours, you think? 12 A. Yeah. 13 Q. And you're being compensated at the rate of \$400 14 per hour; is that right? 15 A. Yes. 16 Q. If you could turn in Exhibit 2 to Exhibit B. 17 A. (Witness complies.) 18 Q. And it's titled, Documents Reviewed. 19 Do you have that? 20 A. Yeah. 21 Q. And so you set forth different materials that 22 you reviewed in connection with preparing this report, 23 correct? 24 A. Yes. 25 Q. Did you review any materials other than or in</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. You don't know what that would show? 2 A. What would show? 3 Q. If you did a search of the -- 4 A. No. 5 Q. -- policy, you don't know if Robert Hughes 6 Associates has any policies that may have been issued by 7 Jamestown Mutual or Unigard Insurance Company to parties 8 other than Troy Belting? 9 A. No. 10 Q. Do you know, is there a cost difference between 11 purchasing an M&C policy, or manufacturers and contractors 12 liability policy, and a CGL, or comprehensive general 13 liability or commercial general liability policy? 14 MR. BRENNAN: Objection. 15 A. A cost difference premium-wise? 16 Q. (BY MR. KOTULA) Yes, sir. 17 A. I have no -- it would really depend upon who 18 you're insuring. I have no idea. I've never rated any of 19 them, so I wouldn't know. 20 Q. So you don't know if an M&C policy would be 21 cheaper than a CGL policy? 22 MR. BRENNAN: Objection. 23 A. It would all depend upon who you're insuring and 24 how much -- what kind of products they have and that sort 25 of thing. I mean...</p>
<p style="text-align: right;">Page 43</p> <p>1 addition to those that are set forth on this exhibit? 2 A. No, that was plenty. No. 3 Q. Does Robert Hughes Associates have a library 4 with insurance materials? 5 A. Yes. 6 Q. Did you use or refer to the library in 7 connection with preparing your report? 8 A. Not in this report, no. 9 Q. Okay. And does the Robert Hughes Associates 10 library contain a policy or insurance policy bank? 11 A. Yeah, I think they have committed it to disks 12 now; I'm not sure. 13 Q. If I told you that Mr. Hughes testified that he 14 has 6,000 or so insurance policies on file in his library, 15 would that be consistent with your understanding? 16 A. Yeah, I don't know. It could very well be. I 17 mean, I know that they have thousands, but I don't know 18 how many. 19 Q. Did you check the policy library for policies 20 that may have been issued by Jamestown Mutual or Unigard 21 Insurance Company to other parties? 22 A. No. 23 Q. So you don't know what that would indicate, 24 correct? 25 A. Pardon me?</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. (BY MR. KOTULA) Do you have an understanding 2 whether a standard M&C policy on its own affords coverage 3 for product liability claims? 4 MR. BRENNAN: Objection. 5 A. As completed and products coverage, if you buy 6 it, yes. 7 Q. (BY MR. KOTULA) Do you have an understanding 8 that that's afforded on a rider or an endorsement basis? 9 MR. BRENNAN: Objection. 10 A. Normally. 11 Q. (BY MR. KOTULA) And if an M&C policy doesn't 12 have that rider added to it, does the M&C policy afford 13 coverage for product liability claims? 14 MR. BRENNAN: Objection. 15 A. Well, no, not if it doesn't have it. 16 Q. (BY MR. KOTULA) So a standard M&C policy on 17 its own doesn't afford coverage for product liability 18 claims, correct? 19 A. I have never seen an M&C policy that did not 20 have a products liability policy, completed operations and 21 products liability. But, I mean, obviously, if you didn't 22 buy it, you didn't buy it. 23 Q. Right. Have you, in your life, ever seen a 24 Jamestown Mutual Insurance Company policy? 25 A. I don't think so. I don't think so.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. And subset of that probably has to be true, but 2 I'll ask it: Have you ever seen a Jamestown Mutual 3 Insurance Company M&C policy? 4 A. No. 5 Q. And have you ever seen a Jamestown Mutual 6 Insurance Company CGL policy? 7 MR. BRENNAN: Objection. 8 A. No. 9 Q. (BY MR. KOTULA) In your background working in 10 the insurance industry and as an insurance consultant, 11 have you become aware that customers often make decisions 12 about purchasing insurance based on price or cost? 13 MR. BRENNAN: Objection. 14 A. What was the first part of that question? I'm 15 not quite sure what you're asking. 16 MR. KOTULA: Can you read back? 17 A. Am I aware that they make decisions on policies 18 based on price? 19 Q. (BY MR. KOTULA) Yes, sir. 20 MR. BRENNAN: Objection. 21 A. I guess that's pretty obvious. But, I mean, I 22 don't -- I'm not -- you know, I don't have any awareness 23 of that at all. 24 Q. (BY MR. KOTULA) But you think it's obvious 25 that it's true?</p>	<p style="text-align: right;">Page 48</p> <p>1 money by holding companies and so forth. I've done a lot 2 of different things -- excuse me -- besides claims. 3 Q. Can you be more specific in providing details 4 about your work for insurance companies with claims 5 activity, as you described it; what does that entail? 6 A. Well, just I went in -- myself and another 7 fella, we went in several times in the past and looked at 8 the -- some of the claims handling that they were doing, 9 or they had given it to somebody else to do, and wanted to 10 know whether we thought that it was proper or whether -- 11 actually, we were looking at reserves and seeing if the 12 reserves were proper. 13 Q. Was it a claims handling audit? 14 A. Part of it was. Yeah, part of it was. 15 Q. And for what company? 16 A. Travelers was one of them. I think we did some 17 compensation for Liberty Mutual. I don't know. There 18 were, you know, several. 19 Q. Is it fair to say you've never assisted a 20 policyholder in purchasing a policy of insurance from 21 Jamestown Mutual Insurance Company? 22 A. No, I have not. 23 Q. Have you ever assisted a policyholder in 24 purchasing an insurance policy from Unigard Insurance? 25 A. Assisted a policyholder? No.</p>
<p style="text-align: right;">Page 47</p> <p>1 MR. BRENNAN: Objection. 2 A. Well, it's obvious from the standpoint that they 3 ask an agent to, you know, shop around and give them the 4 best quote they can from different carriers. 5 Q. (BY MR. KOTULA) In your experience working in 6 the insurance industry and as an insurance consultant, 7 have you ever placed policies of insurance for customers, 8 policyholders? 9 A. As an agent, you mean? 10 Q. Yes, sir. 11 A. I was in charge of an agency with Union Standard 12 Insurance Company. I did not place them. I was president 13 of the corporation, but had underwriters that did that, 14 and I only passed upon large accounts. 15 Q. Is your experience as an insurance consultant 16 limited to testifying as an expert or serving as an 17 expert? 18 MR. BRENNAN: Objection. 19 A. No, I have done other work. 20 Q. (BY MR. KOTULA) What else have you done as an 21 insurance consultant? 22 A. I've done audits on the self-insurers. I have 23 done some work for some carriers regarding their claim 24 activity. I have done some work regarding compensation 25 for officers by people, whether they were getting more</p>	<p style="text-align: right;">Page 49</p> <p>1 Q. Have you personally, as you sit here today, ever 2 seen a Jamestown Mutual Insurance Company M&C policy 3 endorsement adding in coverage for products hazard? 4 MR. BRENNAN: Objection. 5 A. Well, I think there was an independent 6 contractor photocopy I saw in one of the exhibits. 7 Q. (BY MR. KOTULA) Right. But did that 8 endorsement add in products coverage to an M&C policy? 9 A. I think it was just independent contractors. 10 Q. All right. So if you can answer my question. 11 A. No, I have not. 12 Q. Okay, thank you. 13 Sir, can you tell us the types -- and this 14 is in general; not about Troy Belting. 15 But in general, from your experience, can 16 you tell us the types of secondary evidence that can be 17 used to attempt to prove up a lost or missing policy? 18 MR. BRENNAN: Objection. 19 A. Well, obviously, expense reports from a 20 policyholder that shows that they paid insurance. There's 21 agents' files that indicate that they had coverages at 22 certain times through certain carriers. There's 23 correspondence that's generated between policyholders and 24 insurance carriers and agents. There's several different 25 things. Claims -- when you find claim files that have</p>

<p style="text-align: right;">Page 50</p> <p>1 coverage information in them.</p> <p>2 Q. (BY MR. KOTULA) Is that -- have you exhausted</p> <p>3 your knowledge of secondary evidence?</p> <p>4 A. Oh, yeah, from what I can think of right now. I</p> <p>5 mean, you know...</p> <p>6 MR. BRENNAN: Objection.</p> <p>7 Q. (BY MR. KOTULA) Mr. Hughes testified that</p> <p>8 secondary evidence can include actual policies issued by</p> <p>9 the alleged insurer in the gap period where there are</p> <p>10 missing policies that were issued before the gap period or</p> <p>11 after the gap period.</p> <p>12 Are you aware that that's a form of</p> <p>13 secondary evidence that's used by parties seeking</p> <p>14 coverage?</p> <p>15 MR. BRENNAN: Objection.</p> <p>16 A. I don't understand. Say that one more time.</p> <p>17 Let me -- let me -- I didn't quite follow you.</p> <p>18 Q. (BY MR. KOTULA) Mr. Hughes testified that one</p> <p>19 form of secondary evidence that he's familiar with is</p> <p>20 actual insurance policies that a party has issued by the</p> <p>21 insurer that allegedly issued policies in a gap period,</p> <p>22 but where the actual policies were issued before that gap</p> <p>23 period and after that gap period.</p> <p>24 Are you aware that is a form of secondary</p> <p>25 evidence?</p>	<p style="text-align: right;">Page 52</p> <p>1 or excess policies above missing policies in a gap period.</p> <p>2 Do you have any understanding that that can</p> <p>3 be secondary evidence?</p> <p>4 A. Obviously, it would be, yes.</p> <p>5 MR. BRENNAN: Objection.</p> <p>6 A. Because most excess carriers have some -- could</p> <p>7 be.</p> <p>8 Q. (BY MR. KOTULA) Do you know if Troy Belting</p> <p>9 has any umbrella or excess policies above the gap period</p> <p>10 from 1949 to 1974?</p> <p>11 MR. BRENNAN: Objection.</p> <p>12 A. No, I don't.</p> <p>13 Q. (BY MR. KOTULA) Is it your understanding that</p> <p>14 they don't have any policies like that?</p> <p>15 MR. BRENNAN: Objection.</p> <p>16 A. That's my understanding, yes.</p> <p>17 Q. (BY MR. KOTULA) And the same, it's your</p> <p>18 understanding that Troy Belting doesn't have any actual</p> <p>19 policies before the gap period in 1949 or after that</p> <p>20 period ending in 1974?</p> <p>21 MR. BRENNAN: Objection. Are you referring</p> <p>22 to the Pacific ones, too? I think I'm getting confused.</p> <p>23 Q. (BY MR. KOTULA) Issued by Jamestown or</p> <p>24 Unigard.</p> <p>25 MR. BRENNAN: I just want to be clear.</p>
<p style="text-align: right;">Page 51</p> <p>1 MR. BRENNAN: Objection.</p> <p>2 A. I would have to -- you know, it sounds like it</p> <p>3 would be. But, you know, I'm not testifying regarding a</p> <p>4 lost policy. So, I mean -- that sounds reasonable to me.</p> <p>5 Q. (BY MR. KOTULA) Do you know if Troy Belting</p> <p>6 has any actual policies in its possession issued by</p> <p>7 Jamestown Mutual or Unigard Insurance before the period of</p> <p>8 1949 to 1974 or after that period?</p> <p>9 A. No, I'm not aware of that.</p> <p>10 MR. BRENNAN: Object to the form. After?</p> <p>11 Q. (BY MR. KOTULA) I'll unpack it.</p> <p>12 Are you aware whether Troy Belting has any</p> <p>13 actual policies issued by Jamestown Mutual or Unigard</p> <p>14 Insurance Company before 1949 that were issued by</p> <p>15 Jamestown Mutual or Unigard?</p> <p>16 A. No, I'm not aware of that.</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 Q. (BY MR. KOTULA) And are you aware of any</p> <p>19 evidence that Troy Belting has any actual policies issued</p> <p>20 by Jamestown Mutual or Unigard Insurance Company after the</p> <p>21 gap period ending in 1974?</p> <p>22 MR. BRENNAN: Objection.</p> <p>23 A. I'm not aware of that.</p> <p>24 Q. (BY MR. KOTULA) Mr. Hughes testified that</p> <p>25 another form of secondary evidence can be actual umbrella</p>	<p style="text-align: right;">Page 53</p> <p>1 A. I'm not aware of that, no.</p> <p>2 Q. (BY MR. KOTULA) So it's your understanding</p> <p>3 that Troy Belting doesn't have such things, right?</p> <p>4 MR. BRENNAN: Objection.</p> <p>5 A. It's my understanding, yes.</p> <p>6 Q. (BY MR. KOTULA) Now, Mr. Hughes also testified</p> <p>7 that secondary evidence can include having notations of</p> <p>8 policy numbers and policy prefixes and that that can</p> <p>9 constitute secondary evidence.</p> <p>10 Do you understand how that can constitute</p> <p>11 secondary evidence?</p> <p>12 MR. BRENNAN: Objection.</p> <p>13 A. Certainly could be, yes; I would think so.</p> <p>14 Q. (BY MR. KOTULA) Mr. Hughes testified that</p> <p>15 sometimes a policy number or policy prefix can identify an</p> <p>16 insurer for that missing policy, the identity of that</p> <p>17 insurer.</p> <p>18 Do you understand that?</p> <p>19 A. Yes.</p> <p>20 MR. BRENNAN: Objection.</p> <p>21 Q. (BY MR. KOTULA) And he also testified that</p> <p>22 that policy number or policy prefix can identify the type</p> <p>23 of liability policy that may have been issued in that gap</p> <p>24 period.</p> <p>25 Do you understand that?</p>

<p style="text-align: right;">Page 54</p> <p>1 MR. BRENNAN: Objection.</p> <p>2 A. Yes.</p> <p>3 Q. (BY MR. KOTULA) Does Troy Belting have any</p> <p>4 evidence of policy numbers or policy prefixes that</p> <p>5 indicate that -- the type of liability coverage that may</p> <p>6 have existed in the gap period from 1949 to 1974?</p> <p>7 MR. BRENNAN: Objection.</p> <p>8 A. I thought there was a policy number, but I'm not</p> <p>9 aware if they have it.</p> <p>10 Q. (BY MR. KOTULA) Okay. If I told you that</p> <p>11 there's one page of something purporting to be an</p> <p>12 endorsement to a manufacturers and contractors liability</p> <p>13 policy issued to Troy Belting by Jamestown Mutual</p> <p>14 Insurance Company, do you have any awareness of that?</p> <p>15 A. Yes.</p> <p>16 Q. And do you know that that document lists a</p> <p>17 policy number that has a letter "M" on it?</p> <p>18 MR. BRENNAN: Objection.</p> <p>19 A. I didn't -- they could have. You'd have to show</p> <p>20 it to me.</p> <p>21 MR. KOTULA: Off the record.</p> <p>22 (Recess in the proceedings from 11:25 to</p> <p>23 11:25 a.m.)</p> <p>24 (Exhibit 3 marked.)</p> <p>25 Q. (BY MR. KOTULA) Sir, placed before you now is</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. And at the top of the page, under Amendment of</p> <p>2 Declarations, Items 4 and 5, beneath that, what does it</p> <p>3 say in parentheses?</p> <p>4 A. Are you talking about manufacturers and</p> <p>5 contractors liability policy?</p> <p>6 Q. Yes, sir.</p> <p>7 A. Yeah.</p> <p>8 Q. That's what it says, right?</p> <p>9 A. Right.</p> <p>10 Q. So this purports to be an amendment to a</p> <p>11 manufacturers and contractors liability policy; does it</p> <p>12 not?</p> <p>13 A. Yes.</p> <p>14 Q. And the policy number shown has an "M" in it,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. Are you aware that some insurance companies use</p> <p>18 the initial "M" in manufacturers and contractors, or M&C,</p> <p>19 policies?</p> <p>20 A. No, I'm not aware of that.</p> <p>21 MR. BRENNAN: Objection.</p> <p>22 Q. (BY MR. KOTULA) Mr. Hughes testified that he</p> <p>23 was aware of that.</p> <p>24 Do you have any reason to dispute</p> <p>25 Mr. Hughes?</p>
<p style="text-align: right;">Page 55</p> <p>1 what the court reporter has kindly marked as O'Malley</p> <p>2 Exhibit 3.</p> <p>3 Have you ever seen O'Malley Exhibit 3</p> <p>4 before?</p> <p>5 A. Yes.</p> <p>6 MR. KOTULA: And just for the record, this</p> <p>7 was previously marked as Hughes Exhibit 5. And it's a</p> <p>8 one-page document entitled, Amendment of Declaration,</p> <p>9 Items 4 and 5. And there's a type-printed name, Troy</p> <p>10 Belting & Supply Company, towards the top. And it says</p> <p>11 it's issued by Jamestown Mutual Insurance Company of</p> <p>12 Jamestown, New York, this 15th day of September 1964.</p> <p>13 Q. (BY MR. KOTULA) Do you see that?</p> <p>14 A. I'm trying to --</p> <p>15 Q. It's at the very bottom of the page.</p> <p>16 A. Oh. Okay.</p> <p>17 Q. You see that?</p> <p>18 A. Yeah.</p> <p>19 Q. And do you see there's a box in the upper</p> <p>20 right-hand corner, and the preprinted form says, Amending</p> <p>21 Policy Number? Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. And then the policy number is 63-M 29311,</p> <p>24 correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 57</p> <p>1 MR. BRENNAN: Objection.</p> <p>2 A. No.</p> <p>3 (Exhibit 4 marked.)</p> <p>4 (Discussion held off the record 11:28 to</p> <p>5 11:29 a.m.)</p> <p>6 MR. BRENNAN: This is -- what's been marked</p> <p>7 -- Exhibit 4 is a document that we discussed a little bit</p> <p>8 at Mr. Hughes' deposition. As I indicated at that</p> <p>9 deposition, I had not seen anything about a redacted and</p> <p>10 less complete copy, I believe, of this particular policy.</p> <p>11 So I just wanted to raise that issue and assert that</p> <p>12 objection for the record to questions pertaining to this</p> <p>13 now unredacted version with, I believe, a few more pages</p> <p>14 than what was provided previously.</p> <p>15 With that, you can go ahead.</p> <p>16 Q. (BY MR. KOTULA) Okay. Sir, have you ever seen</p> <p>17 this document which we've marked as Exhibit 4?</p> <p>18 MR. KOTULA: For the record, it's titled,</p> <p>19 Comprehensive General Liability Policy Jamestown Mutual</p> <p>20 Insurance Company Issued to Utica Radiator Corporation.</p> <p>21 MR. BRENNAN: Note my objection in my</p> <p>22 previous qualification, but go ahead.</p> <p>23 MR. KOTULA: You can have a continuing</p> <p>24 objection.</p> <p>25 MR. BRENNAN: You just asked him if he ever</p>

15 (Pages 54 - 57)

<p style="text-align: right;">Page 58</p> <p>1 saw this before, and that's what I'm objecting to.</p> <p>2 A. I've never seen this, no.</p> <p>3 Q. (BY MR. KOTULA) Okay. Have you ever seen any</p> <p>4 part of this?</p> <p>5 A. Not that I recall.</p> <p>6 (Witness reviews document.)</p> <p>7 Q. I'm just going to refer you to the very first</p> <p>8 page, which is, I believe, referred to as a declarations</p> <p>9 page.</p> <p>10 Or, in this case, it might be a window of</p> <p>11 part of the policy that shows through a jacket cover,</p> <p>12 right?</p> <p>13 A. Are you talking about the first page here?</p> <p>14 Q. Yes, sir.</p> <p>15 A. Yeah.</p> <p>16 Q. Do you see -- this purports to have been issued</p> <p>17 by Jamestown Mutual Insurance Company, correct?</p> <p>18 A. Yes.</p> <p>19 Q. And it states it's a comprehensive general</p> <p>20 liability policy?</p> <p>21 A. Yes.</p> <p>22 Q. And do you see the policy number that's</p> <p>23 indicated contains -- it says policy number 61-CGL 7788?</p> <p>24 A. Yes, I see that.</p> <p>25 Q. And you see that a comprehensive general</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. (BY MR. KOTULA) And there's an expense account</p> <p>2 document that says "Jamestown" in a few places.</p> <p>3 Do you recall that?</p> <p>4 A. Somewhat, yes. I think I do, but I don't</p> <p>5 remember what it said.</p> <p>6 Q. All right. Do you have -- are you aware of</p> <p>7 anything in the expense account documents that indicates a</p> <p>8 policy number or a policy prefix for the policies</p> <p>9 allegedly issued from 1949 to 1974 by Jamestown Mutual?</p> <p>10 MR. BRENNAN: Objection.</p> <p>11 A. No.</p> <p>12 Q. (BY MR. KOTULA) You can answer.</p> <p>13 A. Pardon me?</p> <p>14 Q. You can answer.</p> <p>15 A. I said no.</p> <p>16 Q. I wanted to make sure it was on the record?</p> <p>17 So to summarize where we are, it's your</p> <p>18 understanding Troy Belting doesn't have copies of any of</p> <p>19 the liability policies that may have been issued to it up</p> <p>20 to 1974, correct?</p> <p>21 MR. BRENNAN: Objection.</p> <p>22 A. That's my understanding, yes.</p> <p>23 Q. (BY MR. KOTULA) That Troy Belting doesn't have</p> <p>24 any actual policies issued by Jamestown Mutual or Unigard</p> <p>25 before 1949 or in 1974, at the end of that gap period?</p>
<p style="text-align: right;">Page 59</p> <p>1 liability policy issued by Jamestown Mutual Insurance</p> <p>2 Company has the initials "CGL" in the policy number,</p> <p>3 correct?</p> <p>4 MR. BRENNAN: Objection.</p> <p>5 A. Right.</p> <p>6 Q. (BY MR. KOTULA) All right. Mr. Hughes was</p> <p>7 asked if the initial "M" on Exhibit 3 (indicating) and the</p> <p>8 initials "CGL" in the policy number on Exhibit 4 denote</p> <p>9 the type of liability policy. And he said, It may well.</p> <p>10 Do you have any reason to dispute that?</p> <p>11 MR. BRENNAN: Objection.</p> <p>12 A. No.</p> <p>13 Q. (BY MR. KOTULA) All right. Are you aware,</p> <p>14 aside from Exhibit 3, whether Troy Belting has any</p> <p>15 secondary evidence whatsoever with policy numbers or</p> <p>16 policy prefixes for the gap period from 1949 to 1974?</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 A. I'm not aware of any, no.</p> <p>19 Q. (BY MR. KOTULA) And so none of the ledger</p> <p>20 entries contain any reference of policy numbers; do they?</p> <p>21 A. No.</p> <p>22 Q. And none of the ledger entries contain any</p> <p>23 policy prefixes such as "M" or "CGL," correct?</p> <p>24 MR. BRENNAN: Objection.</p> <p>25 A. No, not that I saw.</p>	<p style="text-align: right;">Page 61</p> <p>1 MR. BRENNAN: Objection.</p> <p>2 A. No.</p> <p>3 Q. (BY MR. KOTULA) And further, Troy Belting</p> <p>4 doesn't have any umbrella or excess policies for the</p> <p>5 period of 1949 to 1974 over that gap period?</p> <p>6 MR. BRENNAN: Objection.</p> <p>7 A. Not that I saw.</p> <p>8 Q. (BY MR. KOTULA) And further, it's also true</p> <p>9 that Troy Belting doesn't have any evidence, aside from</p> <p>10 Exhibit 3, of any policy numbers for policies allegedly</p> <p>11 issued by Jamestown Mutual or Unigard Insurance Company</p> <p>12 from 1949 to 1974?</p> <p>13 MR. BRENNAN: Objection.</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. (BY MR. KOTULA) In fact, aside from Exhibit 3,</p> <p>16 Troy Belting doesn't have any document that indicates the</p> <p>17 type of liability policy that was issued to it by</p> <p>18 Jamestown Mutual or Unigard, allegedly, for the gap period</p> <p>19 from 1949 to 1974, correct?</p> <p>20 MR. BRENNAN: Objection.</p> <p>21 A. No.</p> <p>22 Q. (BY MR. KOTULA) And by "no," you mean, yes,</p> <p>23 that is correct, correct?</p> <p>24 MR. BRENNAN: Objection.</p> <p>25 Q. (BY MR. KOTULA) Am I right?</p>

<p style="text-align: right;">Page 62</p> <p>1 A. Yeah. What was the question again? This is the 2 only evidence that they have. 3 Q. Right. And you're referring to Exhibit 3? 4 A. Right. 5 Q. So sometimes when someone says "no," and the 6 question says "there isn't anything," and you say "no," 7 it's not always clear that you're agreeing with the 8 statement. 9 You're agreeing -- you're agreeing that my 10 statement was correct? 11 A. Yes. 12 MR. BRENNAN: Objection. I don't even know 13 what we're talking about anymore. I mean it in the nicest 14 way possible. 15 Q. (BY MR. KOTULA) We can read it back, if you'd 16 like. 17 A. No. 18 Q. You're satisfied you know what I'm talking 19 about? 20 A. Yes. 21 Q. Thank you. 22 Mr. O'Malley, did you do any searching for 23 documents or secondary evidence in connection with your 24 opinions on Troy Belting? 25 A. No.</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Have you ever spoken with anyone who served as 2 an insurance agent or broker on behalf of Troy Belting 3 with personal knowledge of insurance policies Troy Belting 4 allegedly purchased for the 1949 to 1974 gap period? 5 A. No. 6 Q. So you haven't spoken with anyone who served as 7 an insurance agent or a broker for Troy Belting who told 8 you that they reviewed any insurance policies issued to 9 Troy Belting for the 1949 to 1974 gap period? 10 A. No. 11 MR. BRENNAN: Objection. 12 Q. (BY MR. KOTULA) Am I correct from your 13 testimony that you haven't spoken with anyone who worked 14 for Troy Belting in the 1940s, 1950s, 1960s or 1970s? 15 A. No. 16 Q. I am correct? 17 A. You are correct, yes. 18 Q. Thank you. 19 A. You are correct. 20 MR. BRENNAN: Easier that way. Now I 21 follow you. 22 MR. KOTULA: I'll try to do that faster. 23 Q. (BY MR. KOTULA) And you've never spoken with 24 anyone who was involved in purchasing insurance policies 25 for Troy Belting in those periods of time?</p>
<p style="text-align: right;">Page 63</p> <p>1 MR. BRENNAN: Objection. 2 Q. (BY MR. KOTULA) So is it a fair statement that 3 in your retention by Troy Belting as an expert in this 4 matter that you relied solely on Mr. Brennan and his law 5 firm to provide you with documents and materials for you 6 to review? 7 A. Yes. 8 Q. And so you didn't do any of your own legwork to 9 contact anyone else to see what documents may exist? 10 A. No. 11 Q. You didn't do any sort of archaeological 12 searches for business records or claims documents or 13 anything else, for that matter, right? 14 A. No. 15 Q. Mr. O'Malley, have you ever spoken with anyone 16 at Troy Belting with personal knowledge of insurance 17 policies that were allegedly purchased for the 1949 to 18 1974 gap period? 19 A. No. 20 MR. BRENNAN: Objection. 21 Q. (BY MR. KOTULA) Have you ever spoken with 22 anyone at Troy Belting that told you that they reviewed 23 any policies issued to Troy Belting from -- for that 1949 24 to 1974 gap period? 25 A. No.</p>	<p style="text-align: right;">Page 65</p> <p>1 A. No, I haven't. 2 Q. Just bear with me. 3 So I'm going to refer you to your expert 4 report, which we've marked as Exhibit 2. 5 A. Yeah. 6 Q. Should be there under the -- 7 A. Yeah. 8 Q. -- other exhibits. 9 You state in your report that you began 10 your professional career in 1958 as a claims 11 representative with Unigard Insurance Company in Tulsa, 12 Oklahoma. 13 Do you see that? 14 A. Yes. 15 Q. And can you tell us what Unigard's business was 16 at that time? 17 A. Actually, the company's name was Northwestern 18 Mutual Insurance Company and Northwest Casualty. They 19 were involved in all kinds of liability insurance and 20 property insurance. 21 Q. And did -- 22 A. I was a multiline adjuster. 23 Q. Did the Northwest companies change their name at 24 some point in time? 25 A. It was my understanding -- while I was there, it</p>

17 (Pages 62 - 65)

<p style="text-align: right;">Page 66</p> <p>1 was my understanding Northwestern Mutual Life Insurance 2 Company brought some kind of a suit against Northwestern 3 Mutual Insurance Company because they thought they had the 4 name first. So Northwestern Mutual Insurance Company went 5 to a consultant, Ruth Allen, and they came up with Unigard 6 as the new name. 7 Q. And the new name was Unigard Insurance Company? 8 A. Yeah. 9 Q. And do you know when that name was taken? 10 A. Late '60s or early '70s; I can't recall exactly. 11 Q. Is it your understanding that at some point in 12 time, Unigard Insurance Company had some relationship with 13 Jamestown Mutual Insurance Company? 14 A. Yes. 15 Q. What's your understanding of that? 16 A. Well, my understanding was that they -- I'm not 17 sure of the process where they -- but they -- I think they 18 converted Jamestown Mutual to a stock company, and then 19 purchased the stock. I don't know if that's exactly 20 right. But, anyway, they assumed the business from 21 Jamestown. 22 Q. Do you know when that happened? 23 A. Again, late '60s, early '70s; something like 24 that. I'm not sure. And I'm not sure that was the 25 process.</p>	<p style="text-align: right;">Page 68</p> <p>1 A. Not that I recall, no. 2 Q. Who was the issuing company that issued 3 insurance policies that you handled claims under while you 4 were at Unigard Insurance Company? 5 A. Unigard -- well, both; Northwestern Mutual 6 Insurance Company and Northwestern Casualty, which was 7 their two companies, and Unigard, which assumed -- which 8 changed the name. 9 Q. So at some point in time, did Unigard begin 10 issuing policies on its own paper? 11 A. Yes. 12 Q. And when was that? 13 A. Late '60s, early '70s; I don't recall. I was 14 here in Dallas at the time, but I don't recall when it 15 was. 16 Q. And the claims that you were handling in your 17 career at Unigard up until 1975, were those claims largely 18 from the Oklahoma/Texas area? 19 A. Before, yes -- well, the southwestern part of 20 it. They had Colorado, New Mexico, Arkansas, Louisiana, 21 several other states. 22 Q. Did you handle claims from New York? 23 A. No. 24 Q. Was that handled by a different unit in the 25 company?</p>
<p style="text-align: right;">Page 67</p> <p>1 Q. And how long did you work at Unigard? 2 A. 17 years. 3 Q. And when did you leave Unigard? 4 A. I didn't leave them. Unigard became financially 5 strapped and had to get rid of their -- a lot of their 6 premiums throughout the country. And they sold the 7 southwestern business to Berkley Corporation, who changed 8 the name and bought Unigard Security, which was the Texas 9 company for Unigard; domestic company, Unigard Security. 10 And Berkley Corporation bought Unigard Security, along 11 with business throughout six, seven, or eight states, 12 maybe; I can't recall. And changed the name Unigard 13 Security to Union Standard Insurance Company. 14 And at that time, they asked me to be vice 15 president of claims. 16 Q. And when was that? 17 A. That was 1975. 18 Q. In your work at Unigard Insurance Company, 19 before it was essentially acquired by W.R. Berkley 20 Corp. -- that unit was acquired by W.R. Berkley Corp. in 21 1975, did you ever have any connection with Jamestown 22 Mutual Insurance Company? 23 A. No, I did not. 24 Q. Did you ever handle claims for Jamestown Mutual 25 Insurance Company?</p>	<p style="text-align: right;">Page 69</p> <p>1 A. Unigard had claims offices in New York. 2 Q. So it was handled by that unit? 3 A. Yes. 4 Q. So is it fair to say you were with Union 5 Standard Insurance Company from 1975 until 1990? 6 A. Yes. 7 Q. And then what happened in 1990? 8 A. I left and went as an independent consultant and 9 expert witness. 10 Q. Now, your report says that you resigned as 11 president and CEO of Union Standard. 12 Were you asked to resign? 13 A. Yes. We had a conflict as to whether or not -- 14 they had asked me to move to Connecticut to be in charge 15 of all the regional companies. At that time, I had a son 16 who was not very well, and we were having treatment here. 17 And I turned that down. Then they asked me to go to 18 Nebraska to take over one of their companies, Union 19 Insurance Company, that was in trouble, and I declined to 20 do that as well. 21 So I kind of lost favor with them. So they 22 asked me to resign. So I left. 23 Q. Okay. I'm going to refer you to your summary of 24 facts on page 2 of Exhibit 2. 25 Do you have that in front of you?</p>

<p style="text-align: right;">Page 70</p> <p>1 A. Page 2?</p> <p>2 Q. Yes, sir.</p> <p>3 A. Oh.</p> <p>4 Q. Do you have that in front of you?</p> <p>5 A. Right.</p> <p>6 Q. You describe in your summary of facts in</p> <p>7 paragraph 1, second sentence: Troy Belting is a provider</p> <p>8 of maintenance, repair, and operation services, including</p> <p>9 parts and supplies.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. At what point in time was that true?</p> <p>13 A. You know, I don't know the process. I know</p> <p>14 at one time, they did some manufacturing. And then at</p> <p>15 the -- in the other part, they did some enhancement of</p> <p>16 other products that were brought in to them. And I don't</p> <p>17 know the exact dates on all that.</p> <p>18 Q. Okay. Is it your understanding Troy Belting was</p> <p>19 a distributor of products that were manufactured by other</p> <p>20 companies?</p> <p>21 A. At one point, yes.</p> <p>22 Q. All right. Is it your understanding that</p> <p>23 they've always been a distributor of parts that were</p> <p>24 manufactured by other companies?</p> <p>25 A. Could be. I didn't -- you know, I don't really</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Can I cite a document? No.</p> <p>2 Q. (BY MR. KOTULA) A single source --</p> <p>3 MR. BRENNAN: Objection.</p> <p>4 Q. (BY MR. KOTULA) -- multiple sources?</p> <p>5 A. Well, some of the depositions may have mentioned</p> <p>6 it. But I didn't -- you know, at that point, I didn't</p> <p>7 know that it was that important. I didn't make very much</p> <p>8 note of that. I think there were other people who</p> <p>9 indicated what they were doing, but I didn't think that</p> <p>10 was anything that I needed to remember or try to</p> <p>11 memorialize.</p> <p>12 Q. Did you review any deposition testimony of</p> <p>13 anyone who worked for Troy Belting during the period of</p> <p>14 1949 to 1974?</p> <p>15 MR. BRENNAN: Objection.</p> <p>16 A. I don't recall.</p> <p>17 Q. (BY MR. KOTULA) If I told you that none of the</p> <p>18 depositions that you list on your Exhibit B to your expert</p> <p>19 report are of persons who were employed at Troy Belting</p> <p>20 during that period, would you have any reason to disagree?</p> <p>21 A. That they were not?</p> <p>22 Q. They were not during the period of 1949 to 1974.</p> <p>23 A. No, I would not disagree.</p> <p>24 Q. In fact, for example, Mr. Barcum didn't start</p> <p>25 working with Troy Belting until sometime in the 2000s.</p>
<p style="text-align: right;">Page 71</p> <p>1 know what all their business was. I did know that they</p> <p>2 had -- at one time, were manufacturers. And then later,</p> <p>3 they became just enhancements of other people's property,</p> <p>4 distributors of other people's business -- property.</p> <p>5 Q. Do you have knowledge of at what point in time</p> <p>6 Troy Belting got involved in different operations and</p> <p>7 practices?</p> <p>8 A. No, I don't.</p> <p>9 Q. So you're not going to testify that Troy Belting</p> <p>10 was always maintaining, repairing, and providing operation</p> <p>11 services for its entire corporate history?</p> <p>12 MR. BRENNAN: Objection.</p> <p>13 A. Because I don't know the entire corporate</p> <p>14 history, I would not.</p> <p>15 Q. (BY MR. KOTULA) You're not saying that from</p> <p>16 1949 to 1974, they were doing all of that, right?</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 A. It's my understanding they were doing that. I</p> <p>19 mean, I don't know how much of each maintenance or repair</p> <p>20 or operation services they were doing at each time. No, I</p> <p>21 don't know that.</p> <p>22 Q. (BY MR. KOTULA) In fact, can you cite us to a</p> <p>23 single document or exhibit that supports that Troy Belting</p> <p>24 was doing all of those things from 1949 to 1974?</p> <p>25 MR. BRENNAN: Objection.</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Correct.</p> <p>2 Q. You understand that, right?</p> <p>3 A. Yes.</p> <p>4 Q. I'm going to refer you to paragraph 6 in your</p> <p>5 summary of facts on page 2 of Exhibit 2.</p> <p>6 Do you have that?</p> <p>7 A. Yes.</p> <p>8 Q. You say: Hartford and PEIC has been defending</p> <p>9 these lawsuits from approximately 1995 to the present.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Is it your understanding that Hartford and/or</p> <p>13 PEIC were defending lawsuits against Troy Belting going</p> <p>14 back into the late 1970s?</p> <p>15 A. Yes.</p> <p>16 Q. So you didn't mean by saying "1995" to be --</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 Q. (BY MR. KOTULA) -- the beginning date that</p> <p>19 those companies began defending Troy Belting; did you?</p> <p>20 MR. BRENNAN: Objection.</p> <p>21 A. No.</p> <p>22 Q. (BY MR. KOTULA) On page 3, paragraph 13 of</p> <p>23 your report -- do you have it in front of you?</p> <p>24 A. Yes.</p> <p>25 Q. You state: On several occasions, Troy Belting</p>

<p style="text-align: right;">Page 74</p> <p>1 or its agents requested that PEIC and Hartford help it 2 investigate its older insurance carriers and help it 3 preserve its rights under older insurance policies. 4 Do you see that? 5 A. Yes. 6 Q. All right. What's your evidence to support that 7 statement? 8 A. I think that was in Barcum's deposition I saw 9 that. 10 Q. Again, I think you just testified that he didn't 11 begin working for Troy Belting until sometime in the 12 2000s; was that right? 13 A. Right. 14 Q. Did he have any knowledge about efforts before 15 he joined the company? 16 MR. BRENNAN: Objection. 17 A. Well, I think he was trying to find out -- I 18 mean, when he came on and -- he was trying to get up to 19 date and trying to get them to defend them on these cases. 20 Q. (BY MR. KOTULA) But that was sometime in the 21 2000s, correct? 22 A. Right. 23 MR. BRENNAN: Objection. 24 Q. (BY MR. KOTULA) Mr. Barcum wasn't with Troy 25 Belting before that; was he?</p>	<p style="text-align: right;">Page 76</p> <p>1 probably came on when they were trying to get some pro 2 rata money from them. 3 Q. Do you know when that began? 4 A. Not exactly, no. I think 2009, I think, when it 5 became pretty hot. 6 Q. And that's when Troy Belting began asking PEIC 7 and Hartford to help it investigate older insurance 8 carriers? 9 MR. BRENNAN: Objection, form. 10 A. Right. I think so. I think that's correct. 11 Q. (BY MR. KOTULA) Okay. And you say: PEIC and 12 Hartford declined to perform these functions. 13 Do you see that? 14 A. Right. 15 Q. What's your basis for that statement? 16 A. I didn't see any evidence where they were going 17 back and trying to find these policies for them. 18 Q. Okay. 19 A. And on the other -- on those multiple asbestos 20 cases that they had, they had never tried to place Unigard 21 on notice on any of them. 22 Q. What's your basis for that? 23 A. The evidence -- there wasn't any evidence that 24 they had. 25 Q. So it's your understanding that Jamestown Mutual</p>
<p style="text-align: right;">Page 75</p> <p>1 A. No. 2 MR. BRENNAN: Objection. 3 Q. (BY MR. KOTULA) So he wasn't doing anything to 4 help Troy Belting before he joined the company; was he? 5 MR. BRENNAN: Objection. 6 A. No. 7 Q. (BY MR. KOTULA) Is there any other basis for 8 that statement, besides what you just referred to? 9 A. Well, I think there was some other depositions 10 that were taken -- and I'm not quite sure -- I can't name 11 them off the top of my head -- that indicated that they 12 had tried to do that. 13 Q. Who did? 14 A. Troy Belting. 15 Q. Troy Belting? 16 A. You said -- are you on 13? 17 Q. Yes, sir. 18 A. Yeah. 19 Q. You stopped in your answer, so I didn't hear you 20 finish. 21 A. No, I'm saying -- I mean, I can't recall all of 22 the depositions -- that I recall off the top of my head, 23 but there were other depositions that indicated to me that 24 they had tried to request Hartford and Pacific Employers 25 investigate these older carriers. And I think that</p>	<p style="text-align: right;">Page 77</p> <p>1 and Unigard Insurance Company had never been placed on 2 notice of these asbestos claims against Troy Belting? 3 MR. BRENNAN: Objection. 4 A. That's not what I said. I said -- what I said 5 was -- you were talking about Pacific Employers and 6 Hartford. And I said they had never placed anybody on 7 notice, except they did Unigard in the Pennell case. But 8 after that, I didn't see any evidence they placed anybody 9 on notice of any coverage. 10 Q. (BY MR. KOTULA) Do you -- are you aware of 11 evidence that Troy Belting asked PEIC or Hartford to place 12 other insurance carriers on notice? 13 MR. BRENNAN: Objection. 14 A. Other than the depositions that I looked at, I 15 can't recall a specific case. 16 Q. (BY MR. KOTULA) Did you see any documents 17 where Troy Belting asked either PEIC or Hartford to place 18 other carriers on notice? 19 MR. BRENNAN: Objection. 20 A. No, I don't recall. I don't recall right now. 21 Q. (BY MR. KOTULA) To your knowledge, in the 22 insurance industry, does a company -- does an insurance 23 company give notice of claims to other insurers when it 24 hasn't been asked specifically by the policyholder to do 25 so?</p>

<p style="text-align: right;">Page 78</p> <p>1 A. Sure.</p> <p>2 Q. You don't think it's the prerogative of the</p> <p>3 policyholder to determine who to put on notice of claims?</p> <p>4 MR. BRENNAN: Objection.</p> <p>5 A. I mean, it's a team effort, both of them. I</p> <p>6 mean, obviously, they're going to try to get other</p> <p>7 carriers in there if it's concurrent coverage or if they</p> <p>8 think that they don't have all the coverage. They put</p> <p>9 them on notice all the time.</p> <p>10 Q. (BY MR. KOTULA) Paragraph 14, you say:</p> <p>11 Various records obtained during discovery established that</p> <p>12 both PEIC and Hartford were aware of evidence establishing</p> <p>13 that Troy Belting was insured by Unigard Insurance and/or</p> <p>14 its predecessor, Jamestown Mutual Insurance, hereinafter</p> <p>15 Unigard/Jamestown, from July 18, 1949, to October 3, 1974.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. What are those records? I'd like you to</p> <p>19 identify them for me.</p> <p>20 A. Well, the agent said that they were; Nicoll &</p> <p>21 MacChesney, whatever their name is. They were involved in</p> <p>22 the Pennell case for several months, and correspondence</p> <p>23 back and forth asking for information. It's my belief and</p> <p>24 opinion that they were doing that to find out whether or</p> <p>25 not the manifestation date was going to be within their</p>	<p style="text-align: right;">Page 80</p> <p>1 support that?</p> <p>2 A. I don't recall him saying that, no.</p> <p>3 Q. Did he say that he had a recollection of</p> <p>4 anything that happened in that meeting?</p> <p>5 A. It was pretty well documented that he said that</p> <p>6 Unigard had the coverage. I mean, obviously, he looked at</p> <p>7 something. He didn't make it up. He said: Whatever I</p> <p>8 wrote is true.</p> <p>9 Q. We're going to look at his deposition testimony.</p> <p>10 But isn't it fair to say that when he was</p> <p>11 deposed, he had no present recollection of what happened</p> <p>12 in connection with that?</p> <p>13 A. At the time he was deposed?</p> <p>14 Q. Yes, sir.</p> <p>15 A. No, he did not.</p> <p>16 Q. He did not have any present recollection,</p> <p>17 correct?</p> <p>18 A. No, he said he didn't. He said that was a long</p> <p>19 time ago.</p> <p>20 Q. Right. He didn't --</p> <p>21 A. But there were documents in the file that show</p> <p>22 he went over there and talked to the agent and said that</p> <p>23 Unigard had coverage. I mean, that's all I can go by is</p> <p>24 what the documents say.</p> <p>25 Q. We'll look at that.</p>
<p style="text-align: right;">Page 79</p> <p>1 policy period.</p> <p>2 Q. Who was doing that to see --</p> <p>3 A. Unigard.</p> <p>4 Q. Unigard was doing what?</p> <p>5 A. Asking for documents from Pacific Employers.</p> <p>6 Q. All right. So when you say various records</p> <p>7 obtained during discovery established that both PEIC and</p> <p>8 Hartford were aware of evidence establishing that Troy</p> <p>9 Belting was insured by Unigard Insurance and/or its</p> <p>10 predecessor, Jamestown Mutual Insurance, from</p> <p>11 July 18, 1949, to October 3, 1974, you're referring to a</p> <p>12 few of these broker letters by Nicoll & MacChesney; is</p> <p>13 that right?</p> <p>14 A. Well --</p> <p>15 MR. BRENNAN: Objection.</p> <p>16 A. No, no, no, no. Well, they were also involved</p> <p>17 in, of course, correspondence with Unigard. Ranalli went</p> <p>18 over and came back, and has a memo in the file that said</p> <p>19 that Unigard had coverage.</p> <p>20 Q. (BY MR. KOTULA) Yeah. And did you review his</p> <p>21 deposition?</p> <p>22 A. Yes.</p> <p>23 Q. Did he say that he reviewed insurance policies?</p> <p>24 A. No.</p> <p>25 Q. Did he say that he looked at any documents to</p>	<p style="text-align: right;">Page 81</p> <p>1 Is there anything else that you include,</p> <p>2 besides the broker letters -- the few broker letters and</p> <p>3 Mr. Ranalli's memo to his file?</p> <p>4 A. Well, PEIC was corresponding with Unigard.</p> <p>5 Q. Anything else?</p> <p>6 MR. BRENNAN: Objection.</p> <p>7 A. I can't recall off the top of my head. But the</p> <p>8 agent said that he had put Unigard on notice.</p> <p>9 Q. (BY MR. KOTULA) And the agent was Nicoll &</p> <p>10 MacChesney?</p> <p>11 A. Right.</p> <p>12 Q. And they were the agent of Troy Belting?</p> <p>13 A. Right.</p> <p>14 Q. And you -- it's your testimony that Nicoll &</p> <p>15 MacChesney told PEIC that they had put Unigard on notice?</p> <p>16 MR. BRENNAN: Objection. That's not what</p> <p>17 he said.</p> <p>18 A. It's my testimony that there's a memo in the</p> <p>19 file that the agent said, We have notified Unigard of</p> <p>20 these claims, or something to that effect.</p> <p>21 Q. (BY MR. KOTULA) Who did that memo go to?</p> <p>22 MR. BRENNAN: Objection.</p> <p>23 A. It went to Troy Belting, I think.</p> <p>24 Q. (BY MR. KOTULA) No one else?</p> <p>25 A. I don't recall.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q. Paragraph 18 of your report, you say: At the 2 conclusion of this investigation by PEIC, PEIC's claim 3 handlers sent correspondence and had communications with 4 Unigard Insurance Company regarding the Pennell claim. 5 Do you see that? 6 A. Yes. 7 Q. And did you read PEIC's claims handler's 8 deposition? 9 A. Which one? 10 Q. William Fields. 11 A. Yes. 12 Q. Is that who you're referring to? 13 A. Yes. 14 Q. Did you read his deposition? 15 A. Yes. 16 Q. And so you're aware that he testified that 17 Unigard's response in correspondence with him indicated 18 that they didn't know what coverage they may have had to 19 Troy Belting? 20 MR. BRENNAN: Objection. 21 A. I think there was a letter there from them, 22 Unigard, saying it wasn't material or something, because I 23 guess he figured that it wasn't -- the manifestation date 24 wasn't within their policy period, so they weren't 25 forthcoming with any information.</p>	<p style="text-align: right;">Page 84</p> <p>1 A. Well, just like I say, in their failing to 2 follow up on the information that they had in the Pennell 3 file, particularly. They wait until 2009 to put them on 4 notice of some pro rata, when they've been handling claims 5 for 20 or 30 years and had an opportunity at that 6 particular time -- a better opportunity to find out who, 7 if anybody, preceded them. 8 Q. Is there anything else? 9 A. No, that's it. 10 Q. That's what you're saying? 11 A. That's what I'm saying. 12 Q. You say that this conduct has impaired Troy 13 Belting's ability to prove the existence of these older 14 policies. 15 Do you see that? 16 A. Yeah. 17 Q. And what are you saying there? 18 A. Just what I just said. I mean, they had -- 19 they've been handling these claims for 20 to 30 years, 20 and, at that point, they could have had better 21 opportunities to find out who was involved before them 22 than Troy Belting has in 2009. And that -- by not doing 23 that, by not following up on that information, it 24 certainly compromised Troy Belting in trying to establish 25 coverage beyond their --</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. (BY MR. KOTULA) But you understand Mr. Fields 2 testified in his deposition that he took Unigard's 3 correspondence to him to mean that they didn't know what 4 type of coverage they may have issued? 5 MR. BRENNAN: Objection. I'm going to 6 object to the extent -- 7 A. I don't recall that. 8 MR. BRENNAN: -- that it's not his 9 testimony. 10 Q. (BY MR. KOTULA) We'll look at it. 11 A. Sure. 12 Q. We'll look at it. 13 A. I think we should. 14 Q. Can you turn to page 5 of your report. 15 A. (Witness complies.) 16 Q. About halfway down the page, you state -- and 17 I'm just going to quote: It is my opinion that PEIC and 18 Hartford's conduct in this regard violated claims 19 standards and has impaired Troy Belting's ability to prove 20 the existence of these older policies and its ability to 21 otherwise obtain coverage from those policies, unquote. 22 Did I read that right? 23 A. Yes. 24 Q. So what's the basis for your statement that PEIC 25 and Hartford's conduct violated claims standards?</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Go ahead. 2 A. -- beyond that period of the '74 period. 3 Q. So it's your opinion that Troy Belting's ability 4 to prove the existence of policies in the 1949 to 1974 gap 5 period has been impaired? 6 A. That's correct. 7 Q. And by that, you mean, Troy Belting doesn't have 8 the type of evidence to prove those policies that they 9 might have had if they had -- if other things had 10 happened; is that what you're saying? 11 MR. BRENNAN: Objection. 12 A. It would have been very easy for them 30 years 13 ago to find that out, as opposed to 2009. 14 Q. (BY MR. KOTULA) But is it fair to say it's 15 your opinion that Troy Belting's quantum of evidence of 16 what policies were allegedly issued to it in the 1949 to 17 1974 gap period was reduced by this conduct? 18 A. That's correct. 19 Q. And so that seems to recognize that the quantum 20 of evidence isn't what it could be. 21 MR. BRENNAN: Objection. 22 Q. (BY MR. KOTULA) Does it not? 23 MR. BRENNAN: Objection. 24 A. Well, obviously, if PEIC and Hartford had, at 25 the time, gone back and -- to Unigard, they might have had</p>

<p style="text-align: right;">Page 86</p> <p>1 the primary policies. I don't know. Who knows?</p> <p>2 Q. (BY MR. KOTULA) But as we sit here now, we</p> <p>3 know Troy Belting doesn't have any actual policies from</p> <p>4 1949 to 1974, right?</p> <p>5 MR. BRENNAN: Objection; asked and</p> <p>6 answered.</p> <p>7 A. That's my understanding, yes.</p> <p>8 Q. (BY MR. KOTULA) They don't have any evidence</p> <p>9 of policy numbers, aside from that one Exhibit 3 we looked</p> <p>10 at?</p> <p>11 MR. BRENNAN: Objection.</p> <p>12 A. Okay.</p> <p>13 Q. (BY MR. KOTULA) Right?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Yes?</p> <p>16 A. Yes.</p> <p>17 Q. They don't have any evidence of the type of</p> <p>18 liability policy that was issued, apart from Exhibit 3</p> <p>19 that we looked at?</p> <p>20 A. Exhibit 3 also said at the bottom, liability.</p> <p>21 Q. Right. M&C policy liability, right?</p> <p>22 A. Yeah.</p> <p>23 Q. But they don't have anything besides that as to</p> <p>24 the type of liability, right?</p> <p>25 MR. BRENNAN: Objection.</p>	<p style="text-align: right;">Page 88</p> <p>1 otherwise investigate Troy Belting's earlier carriers,</p> <p>2 PEIC and Hartford has hampered Troy Belting's rights</p> <p>3 against these policies.</p> <p>4 Do you see that?</p> <p>5 A. That's correct.</p> <p>6 Q. How have PEIC and Hartford hampered Troy</p> <p>7 Belting's rights against these rights, in your opinion?</p> <p>8 A. By not having -- not doing the things they</p> <p>9 should have done at the time by good claims practices and</p> <p>10 finding out who the other carriers are, they've hampered</p> <p>11 Troy Belting's right to get in on the policy information.</p> <p>12 If they had done that 30 years ago, there wouldn't be much</p> <p>13 of a controversy now.</p> <p>14 MR. KOTULA: This might be a good time for</p> <p>15 us to take a --</p> <p>16 THE WITNESS: Pardon me?</p> <p>17 MR. KOTULA: Good time to take a</p> <p>18 five-minute break.</p> <p>19 (Recess in the proceedings from 12:10 to</p> <p>20 12:19 p.m.)</p> <p>21 Q. (BY MR. KOTULA) Sir, you've expressed the</p> <p>22 opinion in your report at page 5 that PEIC and Hartford</p> <p>23 had a duty to search for insurance history and prior</p> <p>24 insurers of Troy Belting before their tenure. And I would</p> <p>25 --</p>
<p style="text-align: right;">Page 87</p> <p>1 A. Not that I'm aware of.</p> <p>2 Q. (BY MR. KOTULA) They don't have any evidence</p> <p>3 of policy limits --</p> <p>4 MR. BRENNAN: Objection.</p> <p>5 Q. (BY MR. KOTULA) -- as we sit here now, right?</p> <p>6 MR. BRENNAN: Objection.</p> <p>7 A. Right.</p> <p>8 Q. (BY MR. KOTULA) They don't have any evidence</p> <p>9 of policy periods, as we sit here now?</p> <p>10 MR. BRENNAN: Objection.</p> <p>11 A. Yeah.</p> <p>12 Q. (BY MR. KOTULA) Right?</p> <p>13 A. Yes.</p> <p>14 Q. You said you haven't served as a lost policy</p> <p>15 expert.</p> <p>16 Do you have an understanding that there are</p> <p>17 cases where parties seeking coverage have better evidence</p> <p>18 than Troy Belting has here?</p> <p>19 MR. BRENNAN: Objection.</p> <p>20 A. Well, I'm sure there are. I mean, how would I</p> <p>21 know? I mean, there's -- thousands of those go on each</p> <p>22 day, each year.</p> <p>23 Q. (BY MR. KOTULA) You say in the middle of page</p> <p>24 5, in that same paragraph we were just looking at: In</p> <p>25 failing to act upon information in their own files or to</p>	<p style="text-align: right;">Page 89</p> <p>1 A. What paragraph are you on? I'm sorry.</p> <p>2 Q. No, I'm just taking about page 5 generally.</p> <p>3 A. Oh, okay.</p> <p>4 Q. It's the tenor of your opinion, is it not, that</p> <p>5 PEIC and Hartford had a duty that they violated to search</p> <p>6 for insurance history and do an investigation of insurance</p> <p>7 history to find out who was on -- an insurer of Troy</p> <p>8 Belting before that, right?</p> <p>9 A. Yes.</p> <p>10 Q. That's your opinion?</p> <p>11 A. Yes.</p> <p>12 Q. And is there some policy provision that you</p> <p>13 maintain obligates them to do that?</p> <p>14 A. Yes.</p> <p>15 Q. And what provision in their insurance policy</p> <p>16 obligates them to do that?</p> <p>17 A. The insuring agreement.</p> <p>18 Q. And go ahead and tell me --</p> <p>19 A. Duty to defend. And their duty to defend the</p> <p>20 policyholder encompasses whatever it takes to get them as</p> <p>21 much coverage as they can, if there's coverage available,</p> <p>22 and whatever it needs, be it excess insurance or</p> <p>23 concurrent insurance, previous insurance; whatever. It's</p> <p>24 their duty, in my estimation.</p> <p>25 And also it's a claim -- it's simply a</p>

<p style="text-align: right;">Page 90</p> <p>1 claim -- a prerogative that you have to do that. You have 2 to -- as a claims adjustor, you have to adjust and see who 3 was on the claims -- see who might be on a claim, and 4 notify them, notify your policyholder. And that's in your 5 duty to defend. You have to do whatever you have to do to 6 get all that information. That's what I think.</p> <p>7 The insurance agreement certainly gives the 8 policy defense rights. And in that, the carrier has to do 9 whatever is necessary to find whatever coverage he can for 10 the insured, if he's going to defend him, right? He's 11 going to see if there's any excess carrier, any concurrent 12 coverage; whatever.</p> <p>13 Q. Okay. Are you complete with your answer? 14 A. Yes. 15 Q. I didn't want to cut you off. 16 A. Okay. 17 Q. It was a little longer than some of your other 18 answers. I'm not editorializing, but I just didn't want 19 to step in when you were in mid-thought. And I know you 20 were ruminating at some point there. 21 A. Yeah. 22 Q. So are you aware of any court of law in the 23 United States agreeing with what you just said? 24 MR. BRENNAN: Objection. 25 A. I'm not aware of any legal decisions, no.</p>	<p style="text-align: right;">Page 92</p> <p>1 us. 2 THE REPORTER: Sorry. 3 MR. KOTULA: She's just asking for the 4 courtesy of a pause. 5 THE REPORTER: Thank you. 6 THE WITNESS: Sorry. 7 Q. (BY MR. KOTULA) We all want this transcript to 8 be a proper reading of what took place. So that's what 9 that's -- it's a good thing. 10 A. That's what it is. 11 Q. We want to know what your opinions are, and we 12 want to know what they're based on so when this day is 13 over, we can go back and look at them; all right? 14 A. Right. 15 Q. It's your interpretation of the duty to defend 16 language in the insuring agreement that PEIC and Hartford 17 have a duty to not only defend the lawsuit, but to look 18 for other coverages. 19 The words themselves don't say that, you 20 would agree, right? 21 MR. BRENNAN: Objection. 22 A. Right. 23 Q. (BY MR. KOTULA) Okay. Now, you indicated in 24 Exhibit B to your expert report that you reviewed the 25 deposition transcript of Michael Moran.</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. (BY MR. KOTULA) Okay. And is it your 2 understanding that PEIC and Hartford defended Troy Belting 3 against all of the asbestos claims that were presented to 4 them? 5 MR. BRENNAN: Objection. 6 A. It's my understanding they did, yes. 7 Q. (BY MR. KOTULA) Did they ask Troy Belting to 8 pay anything at the time? 9 A. Which time? 10 Q. When they were defending them. 11 MR. BRENNAN: Objection. 12 A. What period of time are you talking about? 13 Q. (BY MR. KOTULA) At any period of time. 14 A. Well, they had in 2009. 15 MR. LEASURE: Objection. 16 Q. (BY MR. KOTULA) Before 2009, did they ask Troy 17 Belting to pay anything for that defense? 18 MR. LEASURE: Objection, form. 19 MR. BRENNAN: Objection. 20 A. No, not that I'm aware of. 21 THE REPORTER: When they're making their 22 objections, if you could just hold off for just one second 23 so I can get all of it. 24 MR. KOTULA: She has to type everything. 25 MR. BRENNAN: Take a breath when you hear</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Yes. 2 Q. Do you understand that? 3 A. Yes. 4 Q. And Mr. Moran was an office manager at Troy 5 Belting at some period of time -- 6 A. Yes. 7 Q. -- is that right? 8 A. Yes. 9 Q. Now, do you understand he testified that Troy 10 Belting didn't keep its insurance policies? 11 A. Yes. 12 Q. In fact, we can mark -- 13 (Exhibit 5 marked.) 14 Q. (BY MR. KOTULA) Showing you now what's been 15 marked as O'Malley Exhibit 5. It is the cover page from 16 Mr. Moran's deposition and page 191 of his deposition. 17 Do you see that? 18 A. Yes. 19 Q. And he was asked the question: Do you know 20 whether Troy has copies of any of the Jamestown Mutual 21 Insurance policies allegedly issued to it? 22 Answer: I don't believe so. 23 Do you know who at Troy would know whether 24 Troy has such copies of such policies? 25 No.</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 Question: If Troy had copies of such</p> <p>2 policies, where would they be?</p> <p>3 Answer: That's a good question, indeed,</p> <p>4 unquote.</p> <p>5 Did I read that right?</p> <p>6 A. Yes.</p> <p>7 Q. So you understood Troy doesn't have copies of</p> <p>8 any of its policies after the policies expired, right?</p> <p>9 A. That's what he said. I guess this goes</p> <p>10 together.</p> <p>11 Q. Now, Mr. Hughes was asked at his deposition if</p> <p>12 he ever learned whether the broker maintained copies of</p> <p>13 insurance policies issued to Troy Belting. And he</p> <p>14 testified that he didn't believe the broker kept the</p> <p>15 policies after the expiration dates either.</p> <p>16 MR. BRENNAN: Objection.</p> <p>17 Q. (BY MR. KOTULA) Do you have any information</p> <p>18 about that?</p> <p>19 A. No, I don't.</p> <p>20 Q. Do you have any reason to dispute Mr. Hughes?</p> <p>21 A. No.</p> <p>22 Q. What do you think about the practice of a broker</p> <p>23 or an agent discarding insurance policies after the</p> <p>24 expiration date of the policy term?</p> <p>25 MR. BRENNAN: Objection.</p>	<p style="text-align: right;">Page 96</p> <p>1 about the other.</p> <p>2 Q. (BY MR. KOTULA) What's the question about</p> <p>3 caused-by-accident policies?</p> <p>4 A. Well, I really don't know. I don't know. I</p> <p>5 can't tell you that.</p> <p>6 Q. But it's your opinion -- go ahead.</p> <p>7 A. It's -- it's always been interpreted as -- as an</p> <p>8 occurrence. But in the earlier -- in some of the earlier</p> <p>9 policies, they weren't.</p> <p>10 Q. So it's your understanding that, even though a</p> <p>11 policy may -- a liability policy may expire, if it's on an</p> <p>12 occurrence basis, for example, that it may still respond</p> <p>13 even for claims that are received after the policies</p> <p>14 expired?</p> <p>15 MR. BRENNAN: Objection.</p> <p>16 A. Oh, of course, yes.</p> <p>17 Q. (BY MR. KOTULA) So it's not a good idea for</p> <p>18 Troy Belting or its agent or broker to not keep copies of</p> <p>19 those policies after the expiration; is it?</p> <p>20 MR. BRENNAN: Objection.</p> <p>21 A. I think this lawsuit proves that; doesn't it?</p> <p>22 MR. BRENNAN: Can I have five minutes to</p> <p>23 make a call? Can I have five minutes to make a call? I</p> <p>24 just thought of something I need to take care of. Another</p> <p>25 five-minute break real quick?</p>
<p style="text-align: right;">Page 95</p> <p>1 A. What do I think about it?</p> <p>2 Q. (BY MR. KOTULA) Do you have any opinions about</p> <p>3 it?</p> <p>4 A. Yes.</p> <p>5 Q. What are your opinions?</p> <p>6 A. I think he should have kept them. They all</p> <p>7 should keep them. I think these long-tail claims that</p> <p>8 have come out about pollution and asbestos is a good point</p> <p>9 as to why they should have.</p> <p>10 Q. Now, at some point in time, M&C policies were</p> <p>11 coverages triggered on a cause-by-accident basis.</p> <p>12 Do you understand that?</p> <p>13 A. Yes.</p> <p>14 Q. And then later perhaps on an occurrence basis?</p> <p>15 A. Yes.</p> <p>16 Q. Are you familiar with that?</p> <p>17 A. Yes.</p> <p>18 Q. And does that mean that these policies could</p> <p>19 respond to claims that would be considered covered claims</p> <p>20 even after the policies had expired, as long as something</p> <p>21 happened during the policy period to trigger coverage?</p> <p>22 A. On which ones?</p> <p>23 Q. The cause-by-accident or the occurrence policy.</p> <p>24 MR. BRENNAN: Objection.</p> <p>25 A. The occurrence policy, definitely. I'm not sure</p>	<p style="text-align: right;">Page 97</p> <p>1 MR. KOTULA: Unrelated to this?</p> <p>2 MR. BRENNAN: Unrelated to this.</p> <p>3 MR. KOTULA: Sure.</p> <p>4 MR. BRENNAN: Completely unrelated to this.</p> <p>5 (Recess in the proceedings from 12:29 to</p> <p>6 12:43 p.m.)</p> <p>7 (Exhibit 6 marked.)</p> <p>8 Q. (BY MR. KOTULA) Sir, we've placed before you</p> <p>9 what the court reporter has marked as Exhibit 6. Exhibit</p> <p>10 6 was previously marked as Hughes Exhibit 7. And it's a</p> <p>11 November 16, 1977, letter from Edward Nicoll, Nicoll &</p> <p>12 MacChesney, to Mr. Allen Decker at Troy Belting.</p> <p>13 Yeah, I think I said November 16, 1977.</p> <p>14 Have you ever seen this document before?</p> <p>15 A. Yes.</p> <p>16 Q. And the letter states that the carrier of the</p> <p>17 liability coverage for the past 10-year period prior to</p> <p>18 July 8, 1976, was the Jamestown Mutual Insurance Company,</p> <p>19 paren, Unigard Insurance Company, end paren, unquote,</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. And can you tell from the reference to liability</p> <p>23 coverage what type of liability policy he's referring to?</p> <p>24 MR. BRENNAN: Objection.</p> <p>25 A. In this letter? No.</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 Q. (BY MR. KOTULA) Okay. And it's fair to say, 2 sir, that Troy Belting does not currently allege that 3 Jamestown Mutual issued an insurance policy up to 4 July 8, 1976, correct? 5 A. I don't think that's -- I think it was cut off 6 before that period. 7 Q. Right. It's currently Troy Belting's claim that 8 Jamestown Mutual issued policies up to October 1974, 9 right? 10 A. Yes. 11 Q. So this date isn't even correct, right? 12 A. If that's true, then this is not right. 13 Q. Right. 14 (Exhibit 7 marked.) 15 Q. (BY MR. KOTULA) Showing you now what the court 16 reporter has marked as Exhibit 7. It was previously 17 marked as Hughes Exhibit 8. And it's a letter dated 18 September 15, 1978, from Edward Nicoll, Nicoll & 19 MacChesney, to Mr. Allen Decker. 20 Do you see that? 21 A. Yes. 22 Q. Have you seen this document before? 23 A. Yes, I have. 24 Q. All right. And now he states: Our records show 25 that the Jamestown Mutual Insurance Company, paren,</p>	<p style="text-align: right;">Page 100</p> <p>1 A. No, I don't. I'm just saying it could say who 2 has -- did Jamestown have your liability in comprehensive 3 -- I mean, I don't know what it said. 4 Q. I'll represent to you it doesn't say that 5 Jamestown has the comprehensive general liability. 6 MR. BRENNAN: Objection. 7 A. All right. 8 Q. (BY MR. KOTULA) So can you tell from this what 9 type of liability policy they had? 10 A. No. 11 Q. Okay. 12 (Exhibit 8 marked.) 13 Q. (BY MR. KOTULA) Sir, showing you now what the 14 court reporter has kindly marked as O'Malley Exhibit 8. 15 MR. KOTULA: For the record, it's a 16 one-page document on insurance company, North America, 17 form paper, dated January 3, 1978, and it's signed by 18 Peter Ranalli. It has a Bates stamp of PEIC-013412. 19 Q. (BY MR. KOTULA) Have you ever seen this 20 document before? 21 A. Yes. 22 Q. Is this a document you testified about earlier, 23 a note that Mr. Ranalli made about meeting with Nicoll & 24 MacChesney? 25 A. Yes.</p>
<p style="text-align: right;">Page 99</p> <p>1 Unigard Insurance Company, provided coverage from 2 July 18, 1949, to October 3, 1974, at which time the 3 policy was cancelled. 4 Correct? 5 A. Yes. 6 Q. And then he says: Our records do not show the 7 extent of coverage, unquote. 8 Right? 9 A. Yes. 10 Q. Do you know what he means by that? 11 A. No, I don't know -- I don't. 12 Q. Can you tell from reading this letter the type 13 of coverage that he's saying Jamestown Mutual Insurance 14 Company provided? 15 MR. BRENNAN: Objection. 16 A. Well, not without, I guess, referencing the 17 September 14th, 1978, letter from Troy -- from Allen 18 Decker. 19 Q. (BY MR. KOTULA) And you don't know if that 20 letter actually says the type of policy or type of 21 liability policy that it may have been or not, right? 22 A. The Troy Belting letter -- 23 Q. Yeah. 24 A. -- from Allen Decker? 25 Q. Uh-huh.</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. All right. And it says, quote: I met with 2 insurance agent, Nicoll & MacChesney. 3 Right; that's the first line? 4 A. Right. 5 Q. Does he say who he met with? 6 A. Pardon me? 7 Q. Does he say which person he met with there? 8 A. No, he didn't say that. 9 Q. Okay. He says: Their records indicate that a 10 policy for Troy Belting & Supply was originally effective 11 on -- I can't tell if that's January 1949 or -- it looks 12 like Jan 1949. 13 Is that how you read that? 14 A. I don't know whether it's June or January; I'm 15 not sure. 16 Q. By Jamestown Mutual. 17 All right. Did I read that line right? 18 A. Right. 19 Q. Does he say that he looked at the records? 20 A. He didn't say it here. 21 Q. He uses the word "indicate," right? 22 A. I would assume that you looked at the records, 23 if you're going to say "the records indicate." 24 Q. Does he say that he looked at the records? 25 A. No, he didn't say that. Didn't say it like</p>

<p style="text-align: right;">Page 102</p> <p>1 that, no.</p> <p>2 Q. Right. Doesn't say he examined the records?</p> <p>3 A. No.</p> <p>4 Q. This could be that the broker told him the</p> <p>5 records indicate something, right?</p> <p>6 A. Well, if he's --</p> <p>7 MR. BRENNAN: Objection.</p> <p>8 A. It could say that. It could say that, yes. Of</p> <p>9 course, it could say that. It also -- probably, if he's</p> <p>10 over at the agency, why wouldn't he say -- why wouldn't he</p> <p>11 say, Let me look at them; let me see them?</p> <p>12 Q. (BY MR. KOTULA) Okay. Doesn't say he did --</p> <p>13 A. Doesn't say he did.</p> <p>14 Q. -- right?</p> <p>15 A. He says "the records indicate," so, I mean, he</p> <p>16 obviously had some -- looked at them.</p> <p>17 Q. I don't believe he says anywhere in this</p> <p>18 document that he looked at them.</p> <p>19 Do you see words that say, I reviewed -- I</p> <p>20 reviewed their records?</p> <p>21 MR. BRENNAN: Objection.</p> <p>22 A. No. It just says "their records indicate."</p> <p>23 (Exhibit 9 marked.)</p> <p>24 Q. (BY MR. KOTULA) Sir, we've placed before you</p> <p>25 now what the court reporter has kindly marked as O'Malley</p>	<p style="text-align: right;">Page 104</p> <p>1 Answer: I have no recollection of meeting</p> <p>2 with them.</p> <p>3 12: After reading this report, does it</p> <p>4 refresh your recollection in any way of a meeting with</p> <p>5 Nicoll & MacChesney?</p> <p>6 Answer: No recollection whatsoever,</p> <p>7 unquote.</p> <p>8 Did I read that right?</p> <p>9 A. That's right.</p> <p>10 Q. Page 34, line 14. He's reading from his memo,</p> <p>11 which was O'Malley Exhibit 8.</p> <p>12 I met with insurance agent, Nicoll &</p> <p>13 MacChesney. Their records indicate that a policy for Troy</p> <p>14 Belting & Supply was originally effective on January 1949</p> <p>15 by Jamestown Mutual. Unigard later bought out Jamestown</p> <p>16 and had a policy until cancellation on November 1st, 1974.</p> <p>17 Only carrier on record. Signed, Peter Ranalli.</p> <p>18 Did I read that right?</p> <p>19 A. Yes.</p> <p>20 Q. Question: So this indicates at a meeting</p> <p>21 with the insurance agent, there were some records</p> <p>22 available -- question at the top of 35 -- is that fair to</p> <p>23 say?</p> <p>24 Answer: It is fair to say. It says what</p> <p>25 it says.</p>
<p style="text-align: right;">Page 103</p> <p>1 Exhibit 9.</p> <p>2 MR. KOTULA: For the record, it's a cover</p> <p>3 page of the deposition of Peter Ranalli, R-A-N-A-L-L-I,</p> <p>4 in this case. And it is portions of, so pages 1 to 2,</p> <p>5 pages 31 to 37, pages 41 to 46, and pages 92 to 94.</p> <p>6 Q. (BY MR. KOTULA) You reviewed Mr. Ranalli's</p> <p>7 deposition in preparation of your expert report, correct?</p> <p>8 A. Yes, I have.</p> <p>9 Q. All right. Now, if you'll look at the top of</p> <p>10 page 31 of his deposition -- are you there?</p> <p>11 A. Yes.</p> <p>12 Q. He's referring to the document with the Bates</p> <p>13 stamp 13412, which we just marked as O'Malley Exhibit 8,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. And he's asked at line 12 on page 31: Do you</p> <p>17 recognize that document?</p> <p>18 Answer: I have no recollection of the</p> <p>19 document, but it is my handwriting. It is my signature</p> <p>20 dated January 3rd, 1978.</p> <p>21 Right?</p> <p>22 A. Right.</p> <p>23 Q. Page 32, line 8.</p> <p>24 Question: Just to be clear, do you recall</p> <p>25 ever meeting with Nicoll & MacChesney?</p>	<p style="text-align: right;">Page 105</p> <p>1 Question: Well, you wrote "their records</p> <p>2 indicate." Do you see that sentence?</p> <p>3 Answer: Yes.</p> <p>4 THE REPORTER: You've got to slow down.</p> <p>5 MR. KOTULA: Sorry.</p> <p>6 Q. (BY MR. KOTULA) Do you know whether you would</p> <p>7 have written that unless you had reviewed records?</p> <p>8 Answer: I have no recollection.</p> <p>9 Did I read that right?</p> <p>10 A. Right.</p> <p>11 Q. Do you know if you would have used that language</p> <p>12 without reviewing records?</p> <p>13 Answer: No recollection.</p> <p>14 Question: As you sit here today, do you</p> <p>15 know whether you reviewed any records while you were at</p> <p>16 Nicoll & MacChesney that indicated that Jamestown Mutual</p> <p>17 or Unigard were a carrier for Troy Belting?</p> <p>18 Answer: I have no recollection of my</p> <p>19 meeting with Nicoll & MacChesney. I can only say that in</p> <p>20 over 30 years, I have never lied on a report.</p> <p>21 Right?</p> <p>22 A. Right.</p> <p>23 Q. So then, question at the bottom of page 35:</p> <p>24 So based upon your custom and practice and</p> <p>25 in reviewing these records, do you know whether there were</p>

27 (Pages 102 - 105)

<p style="text-align: right;">Page 106</p> <p>1 any records available to you at that time that indicated</p> <p>2 that Jamestown Mutual or Unigard were an insurer for Troy</p> <p>3 Belting?</p> <p>4 Answer: This says -- this report says the</p> <p>5 records indicate there was a policy for Troy Belting with</p> <p>6 Jamestown. I can't say anything more about that.</p> <p>7 Did I read that right?</p> <p>8 A. Right.</p> <p>9 Q. Page 37, line 18.</p> <p>10 Mr. Ranalli was asked: Do you recall ever</p> <p>11 having any meetings with anyone from Troy Belting</p> <p>12 regarding their prior coverage history?</p> <p>13 Answer: I have no recollection of any</p> <p>14 meetings with Troy Belting.</p> <p>15 Page 41, line 17.</p> <p>16 Let's refer you quickly back to Exhibit 2,</p> <p>17 if you don't mind. And I know you indicated that you</p> <p>18 didn't have any recollection of that meeting, but just for</p> <p>19 clarity, do you recall who you met with at Nicoll &</p> <p>20 MacChesney?</p> <p>21 Answer: My report says I met with</p> <p>22 insurance agent. I can say nothing further about whom I</p> <p>23 met with.</p> <p>24 Question: Did you know an Edward Nicoll?</p> <p>25 Have you ever met him?</p>	<p style="text-align: right;">Page 108</p> <p>1 Did I read that right?</p> <p>2 A. Yeah. I'm -- I'm...</p> <p>3 Q. Just yes or no?</p> <p>4 A. Yes, yes. I'm just trying to keep up with you</p> <p>5 here.</p> <p>6 Q. Would you have had a custom and practice</p> <p>7 regarding the types of records you would ask from an</p> <p>8 insurance agent to review in investigating coverage in an</p> <p>9 asbestos case?</p> <p>10 Answer: The answer I gave a moment ago</p> <p>11 would probably apply to that as well.</p> <p>12 And then page 44, line 4.</p> <p>13 Answer: I don't know if I would say I had</p> <p>14 a custom and practice. I would act in the appropriate</p> <p>15 manner given the facts of the case.</p> <p>16 Question: And do you know during the time</p> <p>17 that you were at Nicoll & MacChesney investigating the</p> <p>18 coverages on behalf of Troy Belting, whether you ever</p> <p>19 reviewed any policies issued by Jamestown or Unigard?</p> <p>20 Answer: I have no recollection of what</p> <p>21 happened at that meeting.</p> <p>22 Do you know whether you ever personally</p> <p>23 communicated with anybody at Unigard regarding Troy</p> <p>24 Belting?</p> <p>25 Answer: No recollection.</p>
<p style="text-align: right;">Page 107</p> <p>1 Answer: I have no recollection of meeting</p> <p>2 him, although it is possible he may have been the person I</p> <p>3 spoke with.</p> <p>4 Have you ever met a Robert or Bob</p> <p>5 MacChesney?</p> <p>6 Answer: The same reply again as I just</p> <p>7 said with Nicoll.</p> <p>8 Then he was asked on page 42: Would you</p> <p>9 have a custom and practice regarding the types of records</p> <p>10 you would be looking to review when going to an insurance</p> <p>11 agent to investigate coverage history?</p> <p>12 Answer: The answer to that is, it would</p> <p>13 depend on the nature of the case and the facts, and, you</p> <p>14 know, I would adjust myself accordingly.</p> <p>15 He continues: I can't give you one flat</p> <p>16 answer, but I would probably ask for the history of the</p> <p>17 coverages, the names of the carriers, the effective dates.</p> <p>18 43: Would it have also been your custom</p> <p>19 and practice to ask for records regarding those matters?</p> <p>20 Answer: It would depend on the case.</p> <p>21 Question: With respect to an asbestos</p> <p>22 case, did you ever investigate insurance coverages in an</p> <p>23 asbestos case?</p> <p>24 Answer: I did so few asbestos --</p> <p>25 asbestosis cases that I would probably have to say no.</p>	<p style="text-align: right;">Page 109</p> <p>1 Do you know whether you ever personally</p> <p>2 communicated with anybody at Jamestown Mutual Insurance</p> <p>3 regarding Troy Belting?</p> <p>4 Answer: No recollection.</p> <p>5 I read that right, correct?</p> <p>6 A. Yes.</p> <p>7 Q. So on page 94, Mr. Ranalli is asked, line 12:</p> <p>8 But, specifically, was this -- were the records -- meaning</p> <p>9 the records that he said indicate --</p> <p>10 A. Which line are you on?</p> <p>11 Q. Line 12.</p> <p>12 But, specifically, was this -- were the</p> <p>13 records written notes, were they policies themselves, or</p> <p>14 --</p> <p>15 Answer: I have no idea.</p> <p>16 Question: -- were they declaration pages?</p> <p>17 Answer: No recollection whatever.</p> <p>18 Question: Were they letters?</p> <p>19 Answer: I can't tell you.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. I read that right, correct?</p> <p>23 A. Right.</p> <p>24 Q. So Mr. Ranalli can't tell us that he looked at</p> <p>25 policies or anything else for that matter; he can't say</p>

<p style="text-align: right;">Page 110</p> <p>1 what he looked at in this deposition; isn't that right?</p> <p>2 MR. BRENNAN: Objection.</p> <p>3 A. When was this deposition taken? 2015; you're</p> <p>4 talking about 30 years later. I doubt very seriously if</p> <p>5 he can recall all that.</p> <p>6 Q. (BY MR. KOTULA) Do you know whether Unigard</p> <p>7 was given an opportunity to speak about what evidence</p> <p>8 there were of policies they may have issued before then?</p> <p>9 MR. BRENNAN: Objection. Before when?</p> <p>10 A. What do you mean "were they given an</p> <p>11 opportunity"?</p> <p>12 Q. (BY MR. KOTULA) Well, you're pointing out that</p> <p>13 Mr. Ranalli didn't remember these things in 2015.</p> <p>14 A. No, you pointed it out. Yes.</p> <p>15 Q. Right. But what evidence are you aware of that</p> <p>16 somebody presented any of this to Unigard or Jamestown</p> <p>17 Mutual and asked them to look at it?</p> <p>18 MR. BRENNAN: Objection. I mean, what --</p> <p>19 A. Well, from the exhibits I saw in the Field's</p> <p>20 deposition, they were corresponding with Unigard.</p> <p>21 (Exhibit 10 marked.)</p> <p>22 Q. (BY MR. KOTULA) Showing you now what the court</p> <p>23 reporter has kindly placed before you and marked as</p> <p>24 O'Malley Exhibit 10. It's an August 11, 1978, letter from</p> <p>25 Mr. Field to Unigard.</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Yes.</p> <p>2 Q. Is this one of the letters you were talking</p> <p>3 about in terms of correspondence that Mr. Field exchanged</p> <p>4 with Mr. Dixon?</p> <p>5 A. Yes.</p> <p>6 Q. Mr. Dixon states, quote: The agent's records</p> <p>7 indicate that our coverage goes back through Jamestown</p> <p>8 Mutual to July 18, 1949, although I cannot see that this</p> <p>9 is material. Going back beyond recent years, there are no</p> <p>10 memoranda to indicate precisely what the coverage was. We</p> <p>11 don't know who may have preceded Jamestown.</p> <p>12 Did I read that right?</p> <p>13 A. Right.</p> <p>14 Q. Mr. Dixon didn't say that Unigard had records</p> <p>15 indicating that Jamestown had coverage; did he?</p> <p>16 MR. BRENNAN: Objection.</p> <p>17 A. In this letter?</p> <p>18 Q. (BY MR. KOTULA) Yes.</p> <p>19 A. No.</p> <p>20 Q. He said that the agent had records?</p> <p>21 A. Right.</p> <p>22 Q. He doesn't even say he saw those records?</p> <p>23 MR. BRENNAN: Objection.</p> <p>24 A. Right. But he doesn't think they're material</p> <p>25 anyway. So -- but it's funny, though, he asked for any</p>
<p style="text-align: right;">Page 111</p> <p>1 Have you seen this document before, sir?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And in addition to enclosing a copy</p> <p>4 of a bill of particulars and an attorney letter, Mr. Field</p> <p>5 asks: Would you kindly advise me of the dates and history</p> <p>6 of your coverage on this risk? I understand you had it</p> <p>7 for at least 10 years prior to our policy. Do you know</p> <p>8 who preceded your company?</p> <p>9 Right?</p> <p>10 A. Yes.</p> <p>11 Q. I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Is this what you're referring to as</p> <p>14 correspondence Mr. Field had?</p> <p>15 A. That's some of it, yes.</p> <p>16 (Exhibit 11 marked.)</p> <p>17 Q. (BY MR. KOTULA) Sir, I've placed before you</p> <p>18 what the court reporter has kindly marked as O'Malley</p> <p>19 Exhibit 11.</p> <p>20 MR. KOTULA: For the record, it's an</p> <p>21 August 21, 1978, letter from James Dixon at Unigard</p> <p>22 Insurance Group to Mr. William Field at Insurance Company</p> <p>23 of North America?</p> <p>24 Q. (BY MR. KOTULA) Have you seen this document</p> <p>25 before, sir?</p>	<p style="text-align: right;">Page 113</p> <p>1 medical reports that you -- when received. Why would he</p> <p>2 want those?</p> <p>3 Q. (BY MR. KOTULA) Well, we'll get into that in a</p> <p>4 second.</p> <p>5 (Exhibit 12 marked.)</p> <p>6 Q. (BY MR. KOTULA) Sir, we've placed before you</p> <p>7 what the court reporter has kindly marked as O'Malley</p> <p>8 Exhibit 12.</p> <p>9 MR. KOTULA: And Exhibit 12 is a transcript</p> <p>10 in this case of the deposition of William Field, and it</p> <p>11 includes the first pages. And then in mini-script form,</p> <p>12 or the four-pages-to-a-page form, it has page 73 to 76,</p> <p>13 173 to 176, 177 to 180, and 181 to 184.</p> <p>14 I could have probably done that in a better</p> <p>15 way, but we know what it is for the record.</p> <p>16 MR. BRENNAN: Yep.</p> <p>17 Q. (BY MR. KOTULA) So you reviewed Mr. Field's</p> <p>18 deposition transcript, right?</p> <p>19 A. Yes.</p> <p>20 Q. And I'm going to refer you to the top of page</p> <p>21 73, line 1. And Mr. Field is being asked about what we've</p> <p>22 marked as O'Malley Exhibit 11.</p> <p>23 He says: It says the agent's records</p> <p>24 indicate --</p> <p>25 A. 12?</p>

<p style="text-align: right;">Page 114</p> <p>1 Q. Well, you're in -- you're in 12.</p> <p>2 A. I'm sorry.</p> <p>3 Q. But he's referring in his testimony to what</p> <p>4 we've marked as Exhibit 11, the letter from Mr. Dixon at</p> <p>5 Unigard, right?</p> <p>6 A. Right.</p> <p>7 Q. And he says: It says -- meaning the document --</p> <p>8 quote, the agent's records indicate that our coverage goes</p> <p>9 back through Jamestown Mutual to July 18, 1949, although,</p> <p>10 I cannot see that this is material. Going back beyond</p> <p>11 recent years, there are no memoranda to indicate precisely</p> <p>12 what the coverage was. We don't know who may have</p> <p>13 preceded Jamestown.</p> <p>14 So he was shown that language. And on page</p> <p>15 76, in the bottom of the same page you're looking at, he</p> <p>16 was -- he provided the following answer, line 10: It says</p> <p>17 that Jamestown Mutual had the coverage from July 18, 1949,</p> <p>18 but they didn't know what the coverage was and they don't</p> <p>19 know who preceded Jamestown. That's about what it says.</p> <p>20 Question: Based upon the reading of that</p> <p>21 paragraph, do you have an understanding one way or another</p> <p>22 as to whether Jamestown issued coverage to Troy Belting?</p> <p>23 Answer: They had coverage, but they don't</p> <p>24 know what it was, apparently, unquote.</p> <p>25 Did I read that right?</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Correct? Mr. Field is saying that his reading</p> <p>2 of Mr. Dixon's letter is that they have coverage, meaning,</p> <p>3 they issued policy or policies, but they don't know what</p> <p>4 it is; they don't know what type?</p> <p>5 MR. BRENNAN: Objection.</p> <p>6 Q. (BY MR. KOTULA) Isn't that what he's saying?</p> <p>7 MR. BRENNAN: Objection.</p> <p>8 A. Doesn't know what type of liability?</p> <p>9 Q. (BY MR. KOTULA) Yes, sir.</p> <p>10 A. Yeah, but I don't know -- that's not exactly</p> <p>11 what he said. But he says they -- they had coverage, but</p> <p>12 they don't know what it is, apparently.</p> <p>13 Q. And that's the same as saying they had policies,</p> <p>14 but they don't know what they are?</p> <p>15 MR. BRENNAN: Objection.</p> <p>16 A. All right.</p> <p>17 Q. (BY MR. KOTULA) Right?</p> <p>18 A. You have to have a policy to have coverage. But</p> <p>19 I'm just saying that's not what -- you said he had a</p> <p>20 policy. He didn't say he had a policy; he said he had</p> <p>21 coverage.</p> <p>22 Q. I said, In effect, he is saying they had -- they</p> <p>23 were saying they had policies, but they don't know what</p> <p>24 type of policies they have?</p> <p>25 A. That's --</p>
<p style="text-align: right;">Page 115</p> <p>1 A. Right.</p> <p>2 Q. So Mr. Field, what he made of Mr. Dixon's letter</p> <p>3 was that they had issued policies, but they don't know</p> <p>4 what kind of policies they issued, correct?</p> <p>5 MR. BRENNAN: Objection.</p> <p>6 A. No. He said they had coverage, but they don't</p> <p>7 know exactly what it was.</p> <p>8 Q. (BY MR. KOTULA) Isn't that the same thing?</p> <p>9 MR. BRENNAN: Objection.</p> <p>10 A. Not policy, no.</p> <p>11 Q. (BY MR. KOTULA) Well, if you say you have</p> <p>12 coverage, isn't -- aren't you saying you have a policy?</p> <p>13 A. Yes. That's what he said is --</p> <p>14 Q. I asked you early on in the deposition, If you</p> <p>15 have -- someone says they have liability coverage, isn't</p> <p>16 that the same as saying they have a liability policy?</p> <p>17 A. Right.</p> <p>18 Q. And can you tell what type of liability policy</p> <p>19 they have if they say they have liability coverage?</p> <p>20 And you said, No.</p> <p>21 A. That's correct.</p> <p>22 Q. If they say they have a liability policy, can</p> <p>23 you tell what type of liability policy?</p> <p>24 And you said, No.</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 117</p> <p>1 MR. BRENNAN: Objection.</p> <p>2 A. -- that's what he said, yes.</p> <p>3 Q. (BY MR. KOTULA) Yeah. If you'll turn to page</p> <p>4 179.</p> <p>5 A. (Witness complies.)</p> <p>6 Q. Actually, look at page 180, line 3.</p> <p>7 Mr. Field was asked: Did you ever see a</p> <p>8 Unigard insurance policy for Troy Belting?</p> <p>9 Answer: No.</p> <p>10 Line 7: Did you ever see a Jamestown</p> <p>11 insurance policy for Troy Belting?</p> <p>12 Answer: No.</p> <p>13 You saw that; you understand Mr. Field has</p> <p>14 never seen a policy, right?</p> <p>15 A. Right.</p> <p>16 Q. Now, there's reference to the Pennell case.</p> <p>17 You've referred to it in your report,</p> <p>18 correct?</p> <p>19 A. Yes.</p> <p>20 Q. And in your testimony today?</p> <p>21 A. Right.</p> <p>22 Q. And Pennell was an asbestos bodily injury case,</p> <p>23 correct?</p> <p>24 A. Yes.</p> <p>25 Q. And is it your understanding that Pacific</p>

<p style="text-align: right;">Page 118</p> <p>1 Employers Insurance Company defended Troy Belting in the 2 Pennell matter? 3 A. Yes. 4 Q. And did they fully defend Troy Belting in that 5 matter? 6 A. Yes. 7 Q. Did they pay all of the defense in that matter? 8 A. Yes. 9 Q. And is it your understanding that Pacific 10 Employers also reached a settlement on behalf of Troy 11 Belting in the Pennell matter? 12 A. Yes. 13 Q. And is it your understanding that Pacific 14 Employers paid the entire amount of the settlement that 15 was due on behalf of Troy Belting? 16 A. Yes. 17 Q. No one else paid any part of that settlement? 18 MR. BRENNAN: Objection. 19 A. No. 20 Q. (BY MR. KOTULA) I'm going to refer you to 21 Exhibit 12 at page 175. It's at the bottom on the left 22 side. 23 A. Which page; I'm sorry? 24 MR. BRENNAN: 175. 25 Q. (BY MR. KOTULA) Page 175.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. So Mr. Field said that one reason Jamestown and 2 Unigard may not have paid anything for Pennell is they 3 didn't have coverage, right? 4 A. That's one possible reason, yes. 5 (Exhibit 13 marked.) 6 Q. (BY MR. KOTULA) Sir, we're placing before you 7 what the court reporter has kindly marked as O'Malley 8 Exhibit 13. It's portions of the deposition of Peter 9 Ranalli. We looked at some other portions a moment ago. 10 MR. KOTULA: For the record, this is pages 11 1 to 2 for the cover page and appearances, and then pages 12 48 to 49 and 97 to 98. 13 Q. (BY MR. KOTULA) You reviewed Mr. Ranalli's 14 deposition, I think you've already testified, correct? 15 A. Yes. 16 Q. Page 48, line 12. 17 Question: Would you, in circumstances 18 where there was a denial of coverage, request to review 19 workers' comp testimony? 20 Answer: If it was pertinent to the case at 21 hand. 22 Question: If there was no coverage 23 available, would you assign a claim number? 24 Answer: Yes. 25 Question: Would that be called a dummy</p>
<p style="text-align: right;">Page 119</p> <p>1 A. All right. 2 Q. And Mr. Field was asked: Would INA pay on a 3 claim for which they had no coverage? 4 That's line 6. 5 Line 8: No. 6 So the fact that Jamestown and Unigard did 7 not pay on the Pennell case, is that significant to you as 8 a claims professional? 9 Answer: It's significant to me, but I 10 don't have any idea what the reason was. 11 Question: Does that suggest to you that 12 perhaps Jamestown and Unigard did not cover that 13 particular claim? 14 Answer: There would be a question, yeah, 15 unquote. 16 Did I read that right? 17 A. Yes. 18 Q. And then he says -- he's asked at line 21: 19 Could that be one of the reasons that Jamestown and 20 Unigard did not pay, because they didn't cover the claim; 21 is that one reason that's possible? 22 Top of line -- page 176, line 1. 23 Answer: Yes. 24 Did I read that right? 25 A. Yes.</p>	<p style="text-align: right;">Page 121</p> <p>1 claim number, or was there a name for it? 2 Answer: No. It would be -- everything we 3 handled -- it says "as a claim" -- is assigned a claim 4 number. 5 Page 49, line 3. 6 Question: Was that true at INA? 7 Answer: Yes. 8 Question: Everything had a claim number? 9 Answer: Yes. 10 Question: Even if there was a 11 determination that there was no available coverage? 12 Answer: That is correct. 13 Do you see that? 14 A. Yes. 15 Q. And that was Mr. Ranalli's testimony in this 16 case, right? 17 A. Okay. 18 Q. You agree with that, right; that's his 19 testimony? 20 A. That's what he said, yes. 21 Q. Now, page 97, line 9, Mr. Ranalli was asked: 22 Was there ever a time that you were notified by another 23 carrier that the carrier was putting INA on notice that 24 they felt INA supplied some or all of the coverage for a 25 particular claim?</p>

<p style="text-align: right;">Page 122</p> <p>1 Answer: It is possible.</p> <p>2 Question: If that were to happen, would</p> <p>3 you open a claim file or a number?</p> <p>4 Answer: Most likely, yes.</p> <p>5 Question: Would you investigate to see</p> <p>6 whether it was true that, in fact, INA provided coverage?</p> <p>7 Answer: Yes.</p> <p>8 Question: Would you ask for information</p> <p>9 from the one who was putting you on notice?</p> <p>10 Answer: Yes.</p> <p>11 Would you also ask for information perhaps</p> <p>12 about the underlying claim?</p> <p>13 Yes.</p> <p>14 Do you see that?</p> <p>15 A. Right.</p> <p>16 Q. Is it your opinion that when Unigard received</p> <p>17 notice of the Pennell matter, it shouldn't have opened up</p> <p>18 a claim?</p> <p>19 MR. BRENNAN: Objection.</p> <p>20 A. I don't know what their practice is, whether</p> <p>21 they dummy claim or open up a claim. You're talking about</p> <p>22 INA here.</p> <p>23 Q. (BY MR. KOTULA) No, I'm just asking you now</p> <p>24 about Unigard.</p> <p>25 Is it your opinion that Unigard, when it</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. (BY MR. KOTULA) I'm showing you now --</p> <p>2 MR. BRENNAN: 14?</p> <p>3 MR. KOTULA: Yes.</p> <p>4 Q. (BY MR. KOTULA) -- what we've marked as</p> <p>5 O'Malley Exhibit 14.</p> <p>6 MR. KOTULA: And for the record, it is a</p> <p>7 summons with notice in the matter of Rose M. Pennell</p> <p>8 against Johns-Manville Sales Corp., et al.</p> <p>9 Q. (BY MR. KOTULA) Have you ever seen this</p> <p>10 document before, sir?</p> <p>11 A. I don't recall seeing it. I might have seen it,</p> <p>12 but I don't recall seeing it.</p> <p>13 Q. Do you know what a summons with notice is under</p> <p>14 New York court practice?</p> <p>15 A. It says, You're -- you hereby have to answer to</p> <p>16 the complaint -- no. I mean, I don't know exactly what</p> <p>17 that means.</p> <p>18 Q. Are you aware that, in New York, an action could</p> <p>19 be commenced with the filing of merely a summons and with</p> <p>20 no complaint being filed?</p> <p>21 MR. BRENNAN: Objection.</p> <p>22 A. It's my understanding in reading this document,</p> <p>23 yeah.</p> <p>24 Q. (BY MR. KOTULA) Just from reading this</p> <p>25 document --</p>
<p style="text-align: right;">Page 123</p> <p>1 received notice of the Pennell matter, that it shouldn't</p> <p>2 have opened up a claim file?</p> <p>3 A. It shouldn't have opened one? You mean, would</p> <p>4 they have; is that what you're asking me?</p> <p>5 Q. No. I'm saying, is it your opinion that they</p> <p>6 should not have opened a claim file?</p> <p>7 MR. BRENNAN: Objection.</p> <p>8 A. It's my opinion that they should have opened a</p> <p>9 claim file.</p> <p>10 Q. (BY MR. KOTULA) Okay. They should have?</p> <p>11 A. Yeah.</p> <p>12 Q. And it's also your opinion then that they should</p> <p>13 have assigned a claim number to that claim file, correct?</p> <p>14 MR. BRENNAN: Objection.</p> <p>15 A. Normally, they do, but some people don't. Some</p> <p>16 people have dummy files that don't have claim numbers.</p> <p>17 Q. (BY MR. KOTULA) Is it your opinion that</p> <p>18 Unigard should have conducted an investigation?</p> <p>19 A. They were. They were asking Pacific Employers</p> <p>20 about all this stuff.</p> <p>21 Q. Right.</p> <p>22 A. Complaint, bill of particulars, any comp, any</p> <p>23 medical.</p> <p>24 Q. Now, I want to show you what's --</p> <p>25 (Exhibit 14 marked.)</p>	<p style="text-align: right;">Page 125</p> <p>1 A. Not this document.</p> <p>2 Q. -- and nothing else?</p> <p>3 A. Just what I gathered from reading the other</p> <p>4 documents and so forth.</p> <p>5 Q. Okay. So you understand that the Pennell case</p> <p>6 was commenced with merely a summons being filed?</p> <p>7 A. Okay.</p> <p>8 Q. Yes?</p> <p>9 MR. BRENNAN: Objection.</p> <p>10 Q. (BY MR. KOTULA) You do understand that?</p> <p>11 A. No, I did not understand that. But I understand</p> <p>12 that now, yes.</p> <p>13 Q. There's no complaint at this point in time,</p> <p>14 right?</p> <p>15 A. Right.</p> <p>16 MR. BRENNAN: At what point in time?</p> <p>17 MR. KOTULA: The time Exhibit 14 was filed.</p> <p>18 MR. BRENNAN: You're talking July 8, 1976?</p> <p>19 MR. KOTULA: Yes, sir.</p> <p>20 MR. BRENNAN: Okay. I just want to make</p> <p>21 sure we're all on the same page.</p> <p>22 MR. KOTULA: I'm not going to give any more</p> <p>23 testimony, but...</p> <p>24 MR. BRENNAN: Just want to make sure. Hey,</p> <p>25 we want a good record, right?</p>

<p style="text-align: right;">Page 126</p> <p>1 Q. (BY MR. KOTULA) When Exhibit 14 was filed with 2 the court, and then served on Troy Belting, there was no 3 complaint commencing that action. 4 Do you understand that now? 5 A. Yes. 6 Q. So there were no allegations to go look at in a 7 complaint? 8 A. Apparently not, no. 9 Q. Okay. Now, if a suit is commenced with a 10 summons with notice like this, does the insurer have a 11 duty to investigate if it's been put on notice of this? 12 MR. BRENNAN: Objection. 13 A. Does the insured? 14 Q. (BY MR. KOTULA) The insurer that's been put on 15 notice of a summons with notice, does it have a duty to 16 investigate it? 17 A. Well, of course they would have a duty to 18 investigate. 19 (Exhibit 15 marked.) 20 Q. (BY MR. KOTULA) I'm showing you now what we've 21 marked as O'Malley Exhibit 15. It is an expert report of 22 James E. O'Malley, Junior, in a case captioned, United 23 States Fidelity & Guaranty Company versus Soco West, Inc. 24 It's dated September 2, 2005. And it appears with a 2005 25 Westlaw 6578723 reference in the District Court -- US</p>	<p style="text-align: right;">Page 128</p> <p>1 investigation to try to determine if they have -- if they 2 issued policies -- 3 A. Right. 4 Q. -- and what those terms were of those policies, 5 correct? 6 A. Right. 7 Q. So you don't deny that Unigard, when it was 8 placed on notice of the Pennell matter, had a duty to 9 conduct a thorough investigation into whether it issued 10 policies and what the terms of those policies may be? 11 A. Well, no -- yes, they do. I mean, they were 12 placed on -- if they had no liability insurance, whether 13 it was through M&C or comprehensive general liability, why 14 would they care what the medical is, what the bill of 15 particulars says, or anything else? 16 I've handled claims long enough to know 17 that if somebody put me on notice of that, and I looked 18 and said, We don't -- all we've got is a workers' 19 compensation claim; they're wanting something else, I'd 20 write them back and say, Well, thanks a lot, but we don't 21 have any coverage for this. 22 So, obviously, they must have had coverage 23 for it or they wouldn't have continued the correspondence. 24 MR. KOTULA: I'm going to move to strike 25 that answer, and ask the question be read back. And you</p>
<p style="text-align: right;">Page 127</p> <p>1 District Court of Montana. 2 Are you familiar with what we've marked now 3 as O'Malley Exhibit 15? 4 A. No. It doesn't ring a bell to me at all. 5 Q. All right. Did you ever provide an expert 6 report in a matter titled, USF&G versus Soco West, in 7 Montana? 8 A. It looks like I did, but I don't recall it. 9 Q. I'm going to refer you to paragraph 15 in your 10 report that we've marked now as Exhibit 15. Let me know 11 when you have it. 12 A. Okay. 13 Q. You state, quote: Over the past years, both 14 USF&G and Continental have denied coverage to Soco on the 15 purported basis that a number of the policies they sold to 16 Dyce, D-Y-C-E, are missing. In my opinion, USF&G and 17 Continental have failed to conduct a prompt and thorough 18 investigation for documents and information relating to 19 the existence and terms of those policies. 20 Did I read that right? 21 A. Right. 22 Q. So in a lost policy case, when an insurer is put 23 on notice of a claim, and they don't have copies of the 24 policies that they're alleged to have issued to a party 25 seeking coverage, they have a duty to conduct a thorough</p>	<p style="text-align: right;">Page 129</p> <p>1 can answer the question I asked, because, with all due 2 respect, I don't think that -- I think you may have 3 misapprehended the question. 4 MR. BRENNAN: I don't think he did. 5 MR. KOTULA: I don't think you were 6 answering the question that I asked. So I would like it 7 read back, and then I'd like you to consider an answer to 8 that question. 9 (The requested portion was read.) 10 A. What was the first part; you don't deny? What 11 did you say? 12 Q. (BY MR. KOTULA) You don't deny that Unigard 13 had a duty to conduct a thorough investigation? 14 MR. BRENNAN: Objection. 15 A. Yes, I think they do have a duty to -- 16 Q. (BY MR. KOTULA) Right. You're agreeing they 17 have -- they have to conduct a thorough investigation? 18 A. Right. 19 MR. BRENNAN: Objection. 20 Q. (BY MR. KOTULA) So they can't just simply say, 21 We're not going to do an investigation? We don't have -- 22 THE REPORTER: Hold on. 23 (Pause in the proceedings from 1:26 to 24 1:41 p.m.) 25 Q. (BY MR. KOTULA) So I'm just picking up.</p>

<p style="text-align: right;">Page 130</p> <p>1 We don't have any policies, question mark?</p> <p>2 MR. BRENNAN: Can you just read the full</p> <p>3 question, because now that didn't make sense to me. Just</p> <p>4 read the full question back.</p> <p>5 MR. KOTULA: I wasn't finished with the</p> <p>6 question, so I needed the ending --</p> <p>7 MR. BRENNAN: If she could read it from</p> <p>8 start to the end now that you just -- I'm sorry to be a</p> <p>9 pain, but my recollection of the start didn't fit the end,</p> <p>10 so I'm confused, and I don't want to be.</p> <p>11 (Recorded portion played back due to</p> <p>12 technical difficulties.)</p> <p>13 MR. BRENNAN: Objection. And I just wanted</p> <p>14 to object, because we started talking about objection --</p> <p>15 excuse me; investigations into policies and the existence</p> <p>16 of policies, and I want to make sure that we're talking</p> <p>17 about the same thing, whether we're talking about</p> <p>18 investigations of the underlying claims or investigations</p> <p>19 of whether the policies exist in the first instance.</p> <p>20 With that being said, you can answer the</p> <p>21 question if you understand which one was meant.</p> <p>22 Q. (BY MR. KOTULA) You can answer.</p> <p>23 MR. BRENNAN: Go ahead; you can answer.</p> <p>24 A. I'm sorry; what was the question? I've lost it.</p> <p>25 Q. (BY MR. KOTULA) I'm just going to repeat it.</p>	<p style="text-align: right;">Page 132</p> <p>1 not going to continue it, if they had no policy. Or if</p> <p>2 they had no policy, they would have said, We don't have a</p> <p>3 general liability policy; we don't need to communicate</p> <p>4 with you anymore.</p> <p>5 Q. (BY MR. KOTULA) Well, that's not what</p> <p>6 Mr. Ranalli said he would do at INA; is it?</p> <p>7 A. What, for instance?</p> <p>8 Q. We looked at his deposition testimony, and he</p> <p>9 said that even if he didn't have evidence that INA issued</p> <p>10 a policy, he would conduct an investigation, and he would</p> <p>11 ask for information about the claim.</p> <p>12 MR. BRENNAN: Objection, form.</p> <p>13 MR. FOX: Objection.</p> <p>14 A. He might have said that, but I don't think</p> <p>15 that's what Unigard was thinking at the time. Unigard had</p> <p>16 a policy, or they wouldn't have been corresponding with</p> <p>17 Mr. Field, asking these things.</p> <p>18 Q. (BY MR. KOTULA) So you think Unigard had an</p> <p>19 actual policy?</p> <p>20 A. I believe Unigard had a comprehensive general</p> <p>21 liability policy or an M&C policy that covered liability</p> <p>22 -- that covered completed operations and products.</p> <p>23 Q. You think that Unigard had in its hand an actual</p> <p>24 insurance policy, with the forms of an insurance policy,</p> <p>25 issued to Troy Belting?</p>
<p style="text-align: right;">Page 131</p> <p>1 A. Yes.</p> <p>2 MR. KOTULA: And you have a continuing</p> <p>3 objection.</p> <p>4 MR. BRENNAN: Thank you very much.</p> <p>5 Q. (BY MR. KOTULA) So an insurance company can't</p> <p>6 just say, We're not going to do an investigation of the</p> <p>7 claim, because we don't have any policies --</p> <p>8 MR. BRENNAN: Objection.</p> <p>9 Q. (BY MR. KOTULA) -- right?</p> <p>10 A. I didn't say that.</p> <p>11 Q. So what you're saying is, Unigard got notice of</p> <p>12 the Pennell claim, and they couldn't find any policies;</p> <p>13 Troy Belting didn't have any policies.</p> <p>14 And is it your opinion that Unigard had no</p> <p>15 duty to conduct a thorough investigation as to whether</p> <p>16 there was any evidence they issued policies?</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 A. No, that's not what I'm saying. I'm saying that</p> <p>19 the documents that I reviewed and the correspondence I</p> <p>20 reviewed to Unigard, Unigard had a policy, a comprehensive</p> <p>21 general liability policy, or they would not have continued</p> <p>22 to ask for workers' comp information, amended complaint;</p> <p>23 other things.</p> <p>24 What they would have done would say, Well,</p> <p>25 look, this is outside of our policy period, and so we're</p>	<p style="text-align: right;">Page 133</p> <p>1 MR. BRENNAN: Objection.</p> <p>2 A. Yes.</p> <p>3 Q. (BY MR. KOTULA) What's your basis for saying</p> <p>4 that?</p> <p>5 A. Because of the correspondence back and forth</p> <p>6 that they were wanting the information. Why would they</p> <p>7 want -- why would they want all of this information if</p> <p>8 they didn't have Troy Belting as a policyholder; what good</p> <p>9 would it do them?</p> <p>10 Q. If they had a policy, why wouldn't they simply</p> <p>11 say in one of the many letters, We have a policy?</p> <p>12 A. Well --</p> <p>13 Q. Are you aware of any correspondence from Unigard</p> <p>14 or Jamestown Mutual saying, We have a policy that covers</p> <p>15 comprehensive general liability or CGL insurance?</p> <p>16 A. No, they didn't say that.</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 Q. (BY MR. KOTULA) Are you aware of any document</p> <p>19 where anyone from Unigard or Jamestown Mutual says, We</p> <p>20 have a policy?</p> <p>21 MR. BRENNAN: Objection.</p> <p>22 A. No, I didn't say that. I'm telling you, my</p> <p>23 opinion is based upon the correspondence back and forth</p> <p>24 that went on for weeks and months. Why would they</p> <p>25 continue to correspond weeks later after they were</p>

<p style="text-align: right;">Page 134</p> <p>1 notified of this if they didn't have a comprehensive 2 liability policy or an M&C that covered products and 3 completed operations? 4 The reason is, they were waiting to see 5 whether or not this -- because at that time, manifestation 6 was the thing that everybody lived by. And they were 7 hoping, and they were right, that the manifestation was 8 outside of their policy limits, outside of their policy 9 period. 10 Q. (BY MR. KOTULA) Are you aware of any evidence 11 that Unigard or Jamestown had an actual policy that one of 12 them had issued to Troy Belting? 13 MR. BRENNAN: Objection. 14 A. I don't have the actual policy. I'm giving my 15 opinion based upon what I see in the file -- in the 16 Pennell file. 17 Q. (BY MR. KOTULA) Right. Are you aware of 18 anybody at any company saying, Jamestown or Unigard has in 19 hand a policy of insurance issued to Troy Belting? 20 A. Well, nobody said that in those words, no. 21 Q. Is it your opinion that they did? 22 MR. BRENNAN: Objection. 23 A. I said nobody said that in those words, no. 24 Q. (BY MR. KOTULA) No, but is it your opinion 25 that someone had an actual copy of the insurance policy</p>	<p style="text-align: right;">Page 136</p> <p>1 A. That's what I said; I said, No. 2 Q. (BY MR. KOTULA) Yes or no? 3 A. I said, No, because -- 4 Q. See, your "because" is not responsive to my 5 question. 6 I just asked you: Did anybody ask them; 7 yes or no? 8 MR. BRENNAN: Objection; asked and 9 answered. 10 Q. (BY MR. KOTULA) And you said, "No"? 11 A. That's right. 12 Q. But then you gave your opinion about why the 13 answer was no. I didn't ask for that. 14 MR. BRENNAN: Objection. 15 A. It wasn't my opinion; it's a fact that the 16 manifestation date was outside anybody else's policy 17 period. 18 Q. (BY MR. KOTULA) And at that point in time, 19 hadn't INA lost on its position that a manifestation 20 trigger applied in asbestos cases in the District Court in 21 48 Insulations? 22 MR. FOX: Objection to form. Lack of 23 foundation. Calls for speculation. 24 MR. BRENNAN: What he said; objection. 25 A. I don't know what you're saying; I'm sorry.</p>
<p style="text-align: right;">Page 135</p> <p>1 that's missing that had been issued to Troy Belting? 2 MR. BRENNAN: Objection. 3 A. That's my opinion, yes. 4 Q. (BY MR. KOTULA) And what's your basis for 5 that? 6 A. Well, we just went through that. On the 7 correspondence that they keep asking William Field -- 8 MR. FOX: Objection to form. Excuse me. 9 Q. (BY MR. KOTULA) You can answer. 10 A. -- William Field for information. And the long 11 period of time that I've been in the claims business, I 12 had more to do than just correspond with people about 13 supposed coverage. If I didn't have any coverage, I'd go 14 on to something else, and I'm sure they would have, too. 15 Q. Did anybody ask Unigard or Jamestown to pay 16 anything for the defense of Pennell at any time? 17 A. No, because they found the manifestation date 18 outside their policy period. 19 Q. That's not what I asked. 20 I asked you: Did anybody at any time ask 21 Unigard or Jamestown Mutual to pay anything for the 22 defense cost of Troy Belting in the Pennell case? 23 MR. BRENNAN: Objection; asked and 24 answered. 25 MR. FOX: Objection, form.</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. (BY MR. KOTULA) Are you familiar with the 48 2 Insulations coverage case? 3 A. The one that caused the pro rata? 4 Q. The one that went exposure trigger and pro rata 5 time on risk allocation? 6 MR. BRENNAN: Objection. 7 MR. FOX: Objection. 8 A. I'm not familiar with it. I know what happened. 9 Q. (BY MR. KOTULA) Are you aware that the caption 10 of that case is, Insurance Company of North America versus 11 48 Insulations? 12 MR. FOX: Objection to form. 13 MR. BRENNAN: Objection. 14 A. No, I didn't know that. 15 Q. (BY MR. KOTULA) That's INA? 16 A. Right. 17 MR. BRENNAN: Objection. 18 Q. (BY MR. KOTULA) Are you aware that at that 19 point in time in 1978, the federal court in 48 Insulations 20 rejected INA's position for a manifestation trigger and 21 adopted an exposure trigger saying all policies in effect 22 while someone was exposed to asbestos were triggered? 23 MR. FOX: Objection to form. 24 MR. BRENNAN: Objection. 25 Q. (BY MR. KOTULA) You can answer.</p>

<p style="text-align: right;">Page 138</p> <p>1 A. Yes.</p> <p>2 Q. All right. So you're saying INA wasn't asking</p> <p>3 for money, because they were going off of a manifestation</p> <p>4 trigger, but that same manifestation trigger had been</p> <p>5 rejected in 48 Insulations?</p> <p>6 MR. BRENNAN: Objection.</p> <p>7 MR. FOX: Objection, form.</p> <p>8 A. I'm going by what their own people said --</p> <p>9 Barbara Shumaker said, We're going to go with this date,</p> <p>10 and it's -- whatever it was, as the manifestation. That's</p> <p>11 what she said. She was an INA employee.</p> <p>12 Q. (BY MR. KOTULA) Well, isn't it a fact that no</p> <p>13 one ever asked Unigard or Jamestown to pay one cent for</p> <p>14 the defense of Pennell at any time?</p> <p>15 A. Is that a fact?</p> <p>16 MR. BRENNAN: Objection.</p> <p>17 Q. (BY MR. KOTULA) Yes.</p> <p>18 A. Yes.</p> <p>19 Q. And isn't it a fact that no one ever asked</p> <p>20 Unigard or Jamestown to pay one cent for the settlement of</p> <p>21 the Pennell claim?</p> <p>22 MR. BRENNAN: Objection; asked and</p> <p>23 answered.</p> <p>24 A. That's correct.</p> <p>25 MR. KOTULA: Off the record.</p>	<p style="text-align: right;">Page 140</p> <p>1 Q. -- you were asked: If it is determined that a</p> <p>2 claim should be denied, then does the insurance company</p> <p>3 have an obligation to provide to claimant a reasonable</p> <p>4 explanation for the basis of the denial?</p> <p>5 Answer: Yes.</p> <p>6 Question: And that is generally provided</p> <p>7 to the claimant in writing?</p> <p>8 Answer: Most of the time. Sometimes it's</p> <p>9 orally, unquote.</p> <p>10 Did I read that right?</p> <p>11 A. That's correct.</p> <p>12 Q. So a denial of coverage can be provided orally</p> <p>13 as well, correct?</p> <p>14 A. Yes.</p> <p>15 Q. And that was your testimony in the Roberts case</p> <p>16 in federal court?</p> <p>17 A. Yeah. In this automobile case, yes.</p> <p>18 Q. Now, you opined that the fact that you don't see</p> <p>19 a written disclaimer of coverage from Unigard means that</p> <p>20 they didn't disclaim coverage, right?</p> <p>21 A. That's my opinion, yes.</p> <p>22 MR. BRENNAN: Objection.</p> <p>23 Q. (BY MR. KOTULA) Yet you testified just now</p> <p>24 that a disclaimer could be given orally, correct?</p> <p>25 A. Yes. That was an automobile case that had to do</p>
<p style="text-align: right;">Page 139</p> <p>1 (Recess in the proceedings from 1:51 to</p> <p>2 2:01 p.m.)</p> <p>3 (Exhibit 16 marked.)</p> <p>4 Q. (BY MR. KOTULA) I'm showing you now what we</p> <p>5 have marked as O'Malley Exhibit 16.</p> <p>6 MR. KOTULA: For the record, it's a</p> <p>7 two-page document in the matter of Roberts versus Printup,</p> <p>8 P-R-I-N-T-U-P, in the Federal District Court for Kansas.</p> <p>9 And it's the transcript of the trial testimony of James</p> <p>10 O'Malley, dated October 11, 2007.</p> <p>11 Q. (BY MR. KOTULA) Were you involved in a case</p> <p>12 called Roberts versus Printup?</p> <p>13 A. Yes, I was.</p> <p>14 Q. And what was your role in that case?</p> <p>15 A. I was an expert for -- wait a minute. This has</p> <p>16 got -- it doesn't have the carrier on here. I can't</p> <p>17 remember the name of the carrier.</p> <p>18 Q. Okay.</p> <p>19 A. Well, anyway, whatever.</p> <p>20 Q. What do you remember about the case?</p> <p>21 A. It was an automobile case, but I can't remember</p> <p>22 exactly what happened. I think this is about 10 years ago</p> <p>23 or so.</p> <p>24 Q. So on the second page of Exhibit 16 --</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 141</p> <p>1 with a claimant that was in the car, as I remember.</p> <p>2 Q. And somehow you're not surprised that Troy</p> <p>3 Belting can't find 25 years of primary policies from 1949</p> <p>4 to 1974, but you have some surprise that a disclaimer</p> <p>5 can't be found from Unigard from 1977 or 1978, if one</p> <p>6 existed --</p> <p>7 MR. BRENNAN: Objection.</p> <p>8 Q. (BY MR. KOTULA) -- is that right?</p> <p>9 A. That's their business is disclaimers or</p> <p>10 acceptance of coverage; Unigard or any insurance carrier.</p> <p>11 Q. But Troy Belting is saying that they were</p> <p>12 covered in primary policies issued by Jamestown Mutual for</p> <p>13 a 25-year period, and they have no documentation, and</p> <p>14 their broker has no documentation to show a policy issued</p> <p>15 by Jamestown, right?</p> <p>16 MR. FOX: Objection.</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 A. I don't know that the broker didn't have it.</p> <p>19 Q. (BY MR. KOTULA) Well, Mr. Hughes testified as</p> <p>20 an expert that the broker discarded the policies after</p> <p>21 they expired.</p> <p>22 I asked you: Do you have any reason to</p> <p>23 dispute Mr. Hughes?</p> <p>24 MR. BRENNAN: Objection.</p> <p>25 A. If he said that, then he knows that. I mean, I</p>

<p style="text-align: right;">Page 142</p> <p>1 don't know that from -- other than testimony that's his, 2 because the agent kept saying that they were covered by 3 Unigard, so they'd been put on notice. 4 Q. (BY MR. KOTULA) It's just interesting that 5 you're willing to overlook that nobody kept copies of the 6 policies for a 25-year period that are alleged to have 7 been issued, but you think the fact that no one can 8 produce a copy of a disclaimer letter or denial letter is 9 somehow surprising. 10 Why is that? 11 MR. BRENNAN: Objection. 12 A. Unigard is in the insurance business. They know 13 what they should be doing. It's a disclaimer; if they're 14 not going to pay for it, say, You know, we don't have any 15 coverage; I'm sorry. 16 Now, what does that have to do with a 17 policyholder discarding his coverage? I mean, I don't 18 understand the connection there. 19 Q. (BY MR. KOTULA) Let me ask you this: Is it 20 your understanding that if an insurer did not issue a 21 policy to a party seeking coverage, didn't have one, but 22 it doesn't deny coverage, that it now owes coverage under 23 a policy that never existed? 24 MR. BRENNAN: Objection. 25 A. I didn't say it would owe it. It would be an</p>	<p style="text-align: right;">Page 144</p> <p>1 for information, Unigard to INA, in my estimation, is a 2 fact that they have coverage; they have a liability 3 policy. 4 Q. (BY MR. KOTULA) Does -- if an insurance 5 company never issued a policy to a particular party, 6 through waiver, can it be responsible to -- as if it had 7 issued a policy of insurance to them? 8 MR. BRENNAN: Objection. 9 A. I'm not a legal expert. My claims expert would 10 say, no, but I have no idea. 11 Q. (BY MR. KOTULA) You testified earlier about 12 the Dario case. 13 Do you recall that? 14 A. Yes. 15 Q. And have you ever seen a complaint in the Dario 16 case? 17 A. I don't know if I saw the complaint or not. I 18 think I saw a summary of something. 19 Q. If you told you that no one has a copy of the 20 complaint in Dario, would that be consistent with your 21 information? 22 MR. BRENNAN: Objection. 23 A. It could be. I saw some information about it; I 24 don't know if it was on the complaint or not. I think it 25 was in a -- where Troy Belting -- meetings or something</p>
<p style="text-align: right;">Page 143</p> <p>1 indication -- I mean, what I'm saying in here is it's a 2 very good indication that they had coverage. 3 Q. (BY MR. KOTULA) Let me give you a 4 hypothetical. An insurer doesn't have a policy that they 5 ever issued to the party seeking coverage, okay? 6 A. You said "insurer" or "insured"? 7 Q. An insurer never issued a policy to this 8 particular party seeking coverage. Accept that as true. 9 It's a hypothetical, okay? 10 A. Okay. 11 Q. They never issued a policy to them. But they 12 don't issue a disclaimer or denial of coverage saying, We 13 didn't issue a policy. 14 Is it your opinion that that insurer had 15 coverage simply because they didn't issue a disclaimer? 16 MR. BRENNAN: Objection. 17 A. In that hypothetical, no. 18 Q. (BY MR. KOTULA) And that's because I asked you 19 to assume that they didn't issue a policy, right? 20 A. Right. 21 Q. But if I hadn't said that, you would say, The 22 fact that they didn't issue a disclaimer is proof that 23 they issued a policy? 24 MR. BRENNAN: Objection. 25 A. I said that the fact that they continued to ask</p>	<p style="text-align: right;">Page 145</p> <p>1 like that I saw. 2 Q. (BY MR. KOTULA) Yeah. I'm going to ask you 3 about that. 4 So is it your understanding that the only 5 evidence about what claims were being made in the Dario 6 case is found in a discussion of the Dario case in the 7 Troy Belting board of directors meeting minutes? 8 MR. BRENNAN: Objection. 9 A. There might be other places, you know, but I 10 recall that one. 11 Q. (BY MR. KOTULA) Do you recall anything else, 12 anywhere else? 13 A. I said there might be others, but I don't recall 14 -- I do recall that. 15 Q. You can't point me to anything, other than that 16 discussion in a board of directors meeting minutes, right? 17 MR. BRENNAN: Objection; asked and 18 answered. 19 A. No. 20 Q. (BY MR. KOTULA) And from that discussion -- 21 and we can take a look at it in the board of directors 22 meeting minutes -- it says that a summons was served, but 23 that they don't have a complaint. 24 Do you recall that? 25 A. No.</p>

<p style="text-align: right;">Page 146</p> <p>1 (Exhibit 17 marked.)</p> <p>2 Q. (BY MR. KOTULA) Sir, we've placed before you</p> <p>3 what the court reporter has kindly marked as O'Malley</p> <p>4 Exhibit 17.</p> <p>5 MR. KOTULA: For the record, it's a</p> <p>6 January 18, 1977, board of directors meeting minutes.</p> <p>7 It's previously marked as Hughes Exhibit 19. It's a</p> <p>8 three-page document.</p> <p>9 Q. (BY MR. KOTULA) Is this the document you were</p> <p>10 referring to where you gleaned information about the</p> <p>11 claim?</p> <p>12 A. Yes, I think it is.</p> <p>13 Q. And do you see where it says in the first</p> <p>14 sentence in the first full paragraph on page 2 of that</p> <p>15 exhibit --</p> <p>16 A. Yes.</p> <p>17 Q. -- A.E. Decker reported that we have received a</p> <p>18 summons of suit, dated 11/24/76?</p> <p>19 A. Yes.</p> <p>20 Q. And then if you go down several lines in that</p> <p>21 paragraph and right along the left margin, the sentence</p> <p>22 begins, quote: Since no copy of the complaint has</p> <p>23 actually been filed, we do not know for sure why we are</p> <p>24 being sued, unquote.</p> <p>25 Did I read that right? (Indicating.)</p>	<p style="text-align: right;">Page 148</p> <p>1 extrinsic to the summons, right here in this document, in</p> <p>2 that paragraph.</p> <p>3 A. Okay.</p> <p>4 Q. Feel free to take a look at it.</p> <p>5 A. The same exhibit?</p> <p>6 Q. That same page 2, Exhibit 17.</p> <p>7 A. Okay.</p> <p>8 Q. Let me know when you've had a chance to look at</p> <p>9 it.</p> <p>10 A. (Witness reviews document.)</p> <p>11 Yeah, okay.</p> <p>12 Q. Are you aware that under New York law, an</p> <p>13 insurer is not permitted to deny a duty to defend based on</p> <p>14 extrinsic evidence that it learns outside of the pleadings</p> <p>15 in a lawsuit?</p> <p>16 MR. BRENNAN: Objection.</p> <p>17 A. No, I'm not aware of that. I'm not a legal</p> <p>18 expert.</p> <p>19 Q. (BY MR. KOTULA) So if that's the case, then</p> <p>20 finding out something about the claim that's in extrinsic</p> <p>21 evidence doesn't take away from an insurer's potential</p> <p>22 duty to defend a claim that's vague and ambiguous; does</p> <p>23 it?</p> <p>24 MR. BRENNAN: Objection.</p> <p>25 A. Probably not, no.</p>
<p style="text-align: right;">Page 147</p> <p>1 Since no copy --</p> <p>2 A. Oh, yeah. Okay.</p> <p>3 Q. Did I read that right?</p> <p>4 A. Right.</p> <p>5 Q. So we talked before about New York court</p> <p>6 practice and summons with notice.</p> <p>7 Do you recall that?</p> <p>8 A. Yes.</p> <p>9 Q. So if Dario's suit had been commenced with a</p> <p>10 summons with notice, and they didn't have a complaint -- I</p> <p>11 asked you about the summons with notice in the Pennell</p> <p>12 case; if insurers might have a duty to defend, based on</p> <p>13 vague allegations and a summons with notice.</p> <p>14 And you said -- and you correct me if I'm</p> <p>15 wrong -- an insurer could have a duty to defend, because</p> <p>16 that summons with notice is the commencement of a suit,</p> <p>17 and an insurer has a duty to defend if there's any</p> <p>18 potential for coverage under the policies; is that right?</p> <p>19 MR. BRENNAN: Objection.</p> <p>20 A. I did say that, yes. There's also other</p> <p>21 evidence in there -- and I don't know where it is -- about</p> <p>22 what the suit was about later on, because they said that</p> <p>23 she got her hair caught in a pulley or something.</p> <p>24 Q. (BY MR. KOTULA) I believe there's some</p> <p>25 extrinsic statement, extrinsic to the complaint and</p>	<p style="text-align: right;">Page 149</p> <p>1 Q. (BY MR. KOTULA) Now, in another board of</p> <p>2 directors meeting minutes, Troy Belting recites that the</p> <p>3 Dario case was settled for Troy Belting with a payment of</p> <p>4 \$2,000.</p> <p>5 Do you recall seeing that?</p> <p>6 A. Yes.</p> <p>7 (Exhibit 18 marked.)</p> <p>8 Q. (BY MR. KOTULA) I'm showing you now what the</p> <p>9 court reporter has marked as O'Malley Exhibit 18.</p> <p>10 MR. KOTULA: For the record, Exhibit 18 is</p> <p>11 an affidavit of James E. O'Malley in a matter titled,</p> <p>12 National Electrical Manufacturers Association against</p> <p>13 Century Indemnity Company, in 1997.</p> <p>14 A. Good lord.</p> <p>15 Q. (BY MR. KOTULA) Have you seen this document,</p> <p>16 sir?</p> <p>17 A. I don't know. I haven't seen it for 18 years, I</p> <p>18 guess.</p> <p>19 Q. All right. And it has a Westlaw reference of</p> <p>20 1997, Westlaw 33795171, in the Eastern District of</p> <p>21 Virginia.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. All right. I want to refer you to page 3 of</p> <p>25 your affidavit.</p>

<p style="text-align: right;">Page 150</p> <p>1 And in paragraph 17, numbered 17, I would</p> <p>2 say -- the second sentence begins, quote: The generally</p> <p>3 accepted understanding in the insurance industry is that</p> <p>4 the policyholder is entitled to a defense under the</p> <p>5 insurance policy until the insurance company can prove</p> <p>6 that none of the allegations against the policyholder</p> <p>7 raise any possibility for coverage under the insurance</p> <p>8 policy, unquote.</p> <p>9 Did I read that right?</p> <p>10 A. Right.</p> <p>11 Q. Is that your opinion?</p> <p>12 A. Yes.</p> <p>13 Q. If you could turn to page 7 of your affidavit.</p> <p>14 A. (Witness complies.)</p> <p>15 Q. I'm going to refer you to paragraph number 49.</p> <p>16 You state in the second sentence, again, quote: If</p> <p>17 there's any question about --</p> <p>18 A. Excuse me; where are you quoting from?</p> <p>19 Q. Paragraph 49.</p> <p>20 A. Okay.</p> <p>21 Q. About two-thirds of the way down.</p> <p>22 A. Okay.</p> <p>23 Q. Quote: If there's any question about whether</p> <p>24 coverage applies, the insurance company must continue to</p> <p>25 defend until such time as it is conclusively determined in</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. If you could turn to page 24, sir.</p> <p>2 A. (Witness complies.)</p> <p>3 Q. Do you have that?</p> <p>4 A. Yes.</p> <p>5 Q. I'm going to refer you to the part about a third</p> <p>6 of the way down the page that says: Employers called</p> <p>7 James Edward O'Malley, Junior, as a witness, and he</p> <p>8 testified as follows.</p> <p>9 Do you see that?</p> <p>10 A. Right.</p> <p>11 Q. And paragraph 5, beneath that, it says that you</p> <p>12 testified as a witness that, quote, The purpose of a good</p> <p>13 claims manual is to make an adjustor, whether he likes it</p> <p>14 or not, focus on things that have nothing to do with the</p> <p>15 lawsuit itself, but which are commonly known within the</p> <p>16 insurance industry as, quote, business decisions, unquote.</p> <p>17 Do you see that?</p> <p>18 A. Right.</p> <p>19 Q. What do you mean there by "business decisions"?</p> <p>20 A. I don't really know. I guess it's --</p> <p>21 MR. BRENNAN: Take a minute to review that</p> <p>22 thing.</p> <p>23 THE WITNESS: Huh?</p> <p>24 MR. BRENNAN: Take your time and review it.</p> <p>25 A. I suspect it might be that -- I mean, it's been</p>
<p style="text-align: right;">Page 151</p> <p>1 a court or other legal proceeding that there is no</p> <p>2 coverage for any of the allegations against the</p> <p>3 policyholder, unquote.</p> <p>4 That was your opinion, right?</p> <p>5 A. Right.</p> <p>6 Q. That's your opinion now, right?</p> <p>7 A. Right.</p> <p>8 (Exhibit 19 marked.)</p> <p>9 Q. (BY MR. KOTULA) We're showing you now what the</p> <p>10 court reporter has kindly marked as O'Malley Exhibit 19.</p> <p>11 MR. KOTULA: For the record, Exhibit 19 is</p> <p>12 a brief in the United States Court of Appeals for the</p> <p>13 Fifth Circuit, in a case called, General Accident</p> <p>14 Insurance Company against Employers National Insurance</p> <p>15 Corporation, in 1994.</p> <p>16 Were you ever retained, sir, on behalf of</p> <p>17 Employers National Insurance Corporation in a dispute with</p> <p>18 other carriers?</p> <p>19 A. It looks like I was. I don't remember it.</p> <p>20 That's been 20 years ago or so.</p> <p>21 Q. There's a Westlaw reference on this document,</p> <p>22 1994, Westlaw 16067272 --</p> <p>23 A. Okay.</p> <p>24 Q. -- in the Fifth Circuit.</p> <p>25 A. All right.</p>	<p style="text-align: right;">Page 153</p> <p>1 20 years ago. I have no idea what I was talking about. I</p> <p>2 don't even know what kind of a case it is.</p> <p>3 MR. BRENNAN: Take your time and refresh</p> <p>4 yourself. You can read the whole thing, if you need to.</p> <p>5 THE WITNESS: I don't want to read the</p> <p>6 whole thing.</p> <p>7 (Witness reviews document.)</p> <p>8 A. You know, I don't recall -- I mean, without --</p> <p>9 like I said, this thing is 20 years old.</p> <p>10 Q. (BY MR. KOTULA) The claims people are supposed</p> <p>11 to take into account business decisions?</p> <p>12 A. Pardon me?</p> <p>13 Q. Claims people are supposed to take into account</p> <p>14 business decisions?</p> <p>15 A. That's apparently what I said, yes.</p> <p>16 Q. Do you agree that insurance companies should</p> <p>17 consider making nuisance value settlements when the</p> <p>18 opportunity arises and it's appropriate?</p> <p>19 A. It could be, yes, depending upon if they have</p> <p>20 coverage.</p> <p>21 Q. And do you have an opinion about whether -- if</p> <p>22 an insurance company is defending vague allegations,</p> <p>23 whether a nuisance value settlement makes sense, to cut</p> <p>24 off that defense, even if it turns out they may not have</p> <p>25 coverage?</p>

<p style="text-align: right;">Page 154</p> <p>1 MR. BRENNAN: Objection.</p> <p>2 A. Well, if I don't have liability insurance, and</p> <p>3 somebody makes a claim against my policyholder that</p> <p>4 involves liability insurance, I don't make a -- any kind</p> <p>5 of a settlement just because it's easy to make or to get</p> <p>6 rid of. If I have a workers' compensation case or</p> <p>7 something -- I mean, why would I do that? There's no</p> <p>8 reason to do that.</p> <p>9 Now, you're talking about -- what you said</p> <p>10 was "vague allegations." Now, that's a different story as</p> <p>11 to whether you make a small settlement or something. I'm</p> <p>12 talking about not having or having a liability policy.</p> <p>13 Q. (BY MR. KOTULA) Let's say you have an M&C</p> <p>14 policy. Let's call it a hypothetical. You have an M&C</p> <p>15 policy that you issued as an insurance company, and the</p> <p>16 allegations are so vague, they're not clear whether it's a</p> <p>17 premises or operations claim that could be covered under</p> <p>18 the M&C coverage, or it's a products claim.</p> <p>19 Would it be appropriate to make a nuisance</p> <p>20 value settlement and cut off the defense obligation at</p> <p>21 that point?</p> <p>22 MR. BRENNAN: Objection.</p> <p>23 A. You know, that's a hypothetical. I'd have to</p> <p>24 have more facts; what kind of a case you're talking about;</p> <p>25 how much money is involved.</p>	<p style="text-align: right;">Page 156</p> <p>1 MR. BRENNAN: Objection. This is now the</p> <p>2 fourth or the fifth time that you've asked the exact same</p> <p>3 question.</p> <p>4 MR. KOTULA: If you want to make an</p> <p>5 objection -- can you refrain from testifying, sir?</p> <p>6 MR. BRENNAN: I am not testifying. You're</p> <p>7 asking the same question four or five times. We're not</p> <p>8 going to tire the witness out to try to get the answer</p> <p>9 that you want. He's given you the answer.</p> <p>10 Q. (BY MR. KOTULA) You can answer.</p> <p>11 A. Yes. I would have to have more information to</p> <p>12 know about that before I would make any kind of a nuisance</p> <p>13 settlement.</p> <p>14 Q. Right. And I asked you, What more information?</p> <p>15 And you haven't told me.</p> <p>16 A. Facts, coverage, you know.</p> <p>17 Q. I gave you -- in the hypothetical, I gave you</p> <p>18 the assumption that you are to assume that the insurer</p> <p>19 issued an M&C policy.</p> <p>20 MR. BRENNAN: Objection; asked and</p> <p>21 answered.</p> <p>22 Q. (BY MR. KOTULA) What other details do you need</p> <p>23 to know?</p> <p>24 A. I don't know what the facts of the case are. I</p> <p>25 mean, why would I give a \$2,000 settlement on a \$2 million</p>
<p style="text-align: right;">Page 155</p> <p>1 Q. (BY MR. KOTULA) Say the person claimed damages</p> <p>2 of \$2-and-a-half million.</p> <p>3 MR. BRENNAN: Objection.</p> <p>4 Q. (BY MR. KOTULA) You could settle it for</p> <p>5 \$2,000.</p> <p>6 A. Again, I'd have to have more facts.</p> <p>7 Q. What other facts?</p> <p>8 A. Well, I'd have to know about what happened.</p> <p>9 Q. You have a summons with notice that has no</p> <p>10 allegations.</p> <p>11 MR. BRENNAN: Objection; asked and</p> <p>12 answered. He's answered this question now four different</p> <p>13 times. He says it depends.</p> <p>14 Go ahead.</p> <p>15 A. I mean, you'd have to have more information than</p> <p>16 that just to have -- just to go pay \$2,000 for a case that</p> <p>17 you don't even know whether you have liability or whether</p> <p>18 you have any coverage. I've never done that.</p> <p>19 Q. (BY MR. KOTULA) I asked you a hypothetical; to</p> <p>20 assume that the insurer has an M&C policy, and they're</p> <p>21 defending a summons with notice that has no allegations</p> <p>22 like you'd find in a complaint.</p> <p>23 And would it be an appropriate nuisance</p> <p>24 value settlement to pay \$2,000 to settle a claim for</p> <p>25 \$2-and-a-half million?</p>	<p style="text-align: right;">Page 157</p> <p>1 allegation that I don't know anything about? I mean, I</p> <p>2 have no idea what you're talking about. People don't do</p> <p>3 that in the insurance business, that I know of.</p> <p>4 They make nuisance settlements sometimes</p> <p>5 because of other things. But if they don't have any</p> <p>6 coverage, if they don't have any liability, they don't</p> <p>7 just say, Oh, we don't want to pay -- we don't want to</p> <p>8 defend this because we don't have any coverage. They let</p> <p>9 the policyholder know, You don't have coverage for this.</p> <p>10 Q. So you're saying that if the allegations of a</p> <p>11 complaint are vague and ambiguous, that -- and the insurer</p> <p>12 can't tell the true nature of what is being claimed, and</p> <p>13 they're not allowed to consider extrinsic facts that they</p> <p>14 may know of, which aren't set forth in allegations in a</p> <p>15 pleading, that the insurer cannot defend the policyholder.</p> <p>16 Is that your position?</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 A. I didn't say that. You said "nuisance</p> <p>19 settlement." You're talking about nuisance settlement.</p> <p>20 Q. (BY MR. KOTULA) So if an insurer is defending</p> <p>21 under that circumstance, is it obligated to continue to</p> <p>22 pay for defense when it could settle the case for a small</p> <p>23 sum?</p> <p>24 MR. BRENNAN: Objection.</p> <p>25 A. I think it's obligated to make a determination</p>

<p style="text-align: right;">Page 158</p> <p>1 what the complaint is, what the bill of particulars are in 2 New York, before they make any kind of a settlement. 3 Q. (BY MR. KOTULA) So it can't factor in business 4 decisions? 5 A. Sure, it could. 6 MR. BRENNAN: Objection. 7 A. But it doesn't necessarily mean that you would. 8 Q. (BY MR. KOTULA) Have you ever factored in 9 business decisions in settling a claim? 10 A. Not in that kind of a situation. I might have 11 -- not that -- I really don't recall. I can't recall. 12 Q. Are you aware of any evidence that Troy Belting 13 had been named in a product liability lawsuit prior to 14 1976? 15 A. I don't recall knowing anything about that or 16 not. I don't remember. 17 Q. If I told you that there isn't any evidence in 18 this case that's been exchanged that Troy Belting has been 19 named in a product liability lawsuit prior to one filed in 20 1976, would you have any information to disagree with 21 that? 22 A. No. 23 Q. Do I understand you correctly, sir, that it's 24 your opinion that because Unigard investigated the Pennell 25 case, but you can't find a disclaimer or denial of</p>	<p style="text-align: right;">Page 160</p> <p>1 MR. BRENNAN: Objection. 2 A. I believe it's a very good assumption that they 3 did have. 4 Q. (BY MR. KOTULA) So you're making an 5 assumption? 6 A. Well, I believe that they did have, or they 7 wouldn't have been acting like that. 8 Q. Yet there isn't a single piece of secondary 9 evidence that has a policy number, other than the one page 10 we marked as Exhibit 3 from an M&C policy, right? 11 MR. BRENNAN: Objection. 12 A. And the fact that you settled the claim on the 13 gal that got her hair cut -- caught in a pulley or 14 whatever. 15 Q. (BY MR. KOTULA) In May of 1974? 16 A. Whatever. 17 Q. So you admit they have no policy numbers -- 18 MR. BRENNAN: Objection. 19 Q. (BY MR. KOTULA) -- aside from Exhibit 3, which 20 has an "M" policy number, right? 21 A. That's correct. 22 Q. There's no evidence of policy limits -- 23 MR. BRENNAN: Objection. 24 Q. (BY MR. KOTULA) -- for the whole 25-year gap 25 period, right?</p>
<p style="text-align: right;">Page 159</p> <p>1 coverage by them, that you believe that proves that they 2 issued comprehensive general liability coverage to Troy 3 Belting? 4 MR. BRENNAN: Objection. 5 A. It's my opinion that they have -- that they have 6 comprehensive general liability insurance or an M&C that 7 covers that incident because of the fact that this wasn't 8 a two or three -- this thing went on for weeks, and he 9 kept writing back, Dixon, or whatever his name is. You 10 know, Do you got any -- do you got any medical? He writes 11 saying, No medical yet. Do you have a bill of 12 particulars? No bill of particulars yet. 13 Q. (BY MR. KOTULA) And you think -- 14 A. I think by that period of time that he would 15 have an idea that, They don't have any liability coverage; 16 why do I keep writing this guy for? I mean, this wasn't a 17 10-day deal. This went on for weeks that he kept asking 18 him. 19 Q. And you believe that proves that Unigard or 20 Jamestown Mutual issued 25 years of primary comprehensive 21 general liability policies to Troy Belting? 22 MR. BRENNAN: Objection. 23 A. It's my opinion that they had liability 24 policies, yes. 25 Q. (BY MR. KOTULA) You believe that proves that?</p>	<p style="text-align: right;">Page 161</p> <p>1 MR. BRENNAN: Objection. 2 A. None that I saw. 3 Q. (BY MR. KOTULA) There's no evidence of policy 4 periods for that whole 25-year gap period, right? 5 A. Other than what the agent said and what the 6 insurance archaeological people came up with. 7 Q. Which they said they were assuming the dates, 8 right? 9 A. Right. 10 MR. BRENNAN: Objection. 11 Q. (BY MR. KOTULA) And the agent's dates kind of 12 moved around a little bit; didn't they? 13 A. Yeah. Well, what he did was, he looked at the 14 policy, and it was through '76, but it had been cancelled 15 pro rata back to '74 or whatever the date was. 16 Q. You mean, looked at the Pacific Employers 17 policy? 18 A. I think it was a Unigard policy -- let's see; 19 the Jamestown policy -- one of them was the pro rata 20 cancelled, and I think it was Jamestown, I believe, and 21 that's why he -- that's why he changed his -- I might have 22 that wrong. 23 Q. I'm just going to show you what's previously 24 been marked as Hughes Exhibit 16. It's my only copy. 25 It's the Pacific Employers policy commencing in 1974.</p>

<p style="text-align: right;">Page 162</p> <p>1 Is that the policy you're thinking of?</p> <p>2 A. Now, let's go back to the -- let's go back to</p> <p>3 the exhibit that has the agent's correspondence on it. I</p> <p>4 don't recall which one it was.</p> <p>5 Q. There's a few of them.</p> <p>6 A. Well, we have one where he was talking about --</p> <p>7 which had contradictory --</p> <p>8 MR. LEASURE: 6 and 7.</p> <p>9 THE WITNESS: What is it?</p> <p>10 MR. BRENNAN: 6 and 7, I guess.</p> <p>11 A. Yeah. 6 -- 6, he says it was prior to July</p> <p>12 the 8th, 1976. And then in Exhibit 7, he says that</p> <p>13 it's -- provided coverage from July 18th, '49, to</p> <p>14 October 3rd, '74. And I think in my -- well, what he did,</p> <p>15 he had a pro rata cancellation there, and then wrote INA</p> <p>16 from that point forward.</p> <p>17 Q. (BY MR. KOTULA) I would suggest to you that's</p> <p>18 entirely speculation, because you don't have a single</p> <p>19 document that establishes that or provides support for</p> <p>20 that; do you?</p> <p>21 A. No.</p> <p>22 MR. BRENNAN: Objection.</p> <p>23 Q. (BY MR. KOTULA) And --</p> <p>24 A. But it certainly cancelled.</p> <p>25 Q. And, by the way, didn't they get the</p>	<p style="text-align: right;">Page 164</p> <p>1 have policy limits?</p> <p>2 A. No.</p> <p>3 MR. BRENNAN: Objection.</p> <p>4 Q. (BY MR. KOTULA) And nowhere does it have</p> <p>5 policy periods or policy prefixes that would say "M" or</p> <p>6 "CGL," right?</p> <p>7 MR. BRENNAN: Objection.</p> <p>8 A. Other than the M&C policy, the amendment.</p> <p>9 MR. KOTULA: I have no further questions</p> <p>10 for you. Other folks may.</p> <p>11 THE WITNESS: Can I go home?</p> <p>12 MR. KOTULA: Other folks may.</p> <p>13 (Recess in the proceedings from 2:35 to</p> <p>14 2:42 p.m.)</p> <p>15 EXAMINATION</p> <p>16 BY MR. LEASURE:</p> <p>17 Q. Good afternoon, Mr. O'Malley. My name is</p> <p>18 Charles Leasure, from the law firm of Shipman & Goodman.</p> <p>19 I represent The Hartford Accident & Indemnity Company,</p> <p>20 Hartford Casualty Insurance Company, and The Hartford</p> <p>21 Insurance Company of the Midwest in this case.</p> <p>22 A. Okay.</p> <p>23 Q. I want to ask you a couple of questions in</p> <p>24 follow up to what Mr. Kotula asked you earlier today, and</p> <p>25 specifically about the opinions that are contained in your</p>
<p style="text-align: right;">Page 163</p> <p>1 October 3, 1974, date from what was previously marked as</p> <p>2 Hughes 16, the Pacific Employers policy which incepts on</p> <p>3 that date?</p> <p>4 MR. BRENNAN: Objection.</p> <p>5 Q. (BY MR. KOTULA) Isn't that where that date</p> <p>6 came from?</p> <p>7 MR. BRENNAN: Objection.</p> <p>8 A. Well, yeah, but that's -- but they didn't come</p> <p>9 then, unless they cancelled the Unigard policy.</p> <p>10 Q. (BY MR. KOTULA) And then we have Mr. Ranalli's</p> <p>11 memo, that says the broker's records indicate there was a</p> <p>12 policy from Jamestown effective on January 1949, but</p> <p>13 Exhibit 7 says July 18, 1949.</p> <p>14 Two different dates, right (indicating)?</p> <p>15 A. May I see that?</p> <p>16 Q. (Attorney hands witness document.)</p> <p>17 A. (Witness reviews document.)</p> <p>18 Two different dates, right.</p> <p>19 Q. All right. And in all of the secondary</p> <p>20 evidence, whether it be ledger entries, expense account</p> <p>21 documents, the broker letters, nowhere does it say the</p> <p>22 type of liability coverage, right?</p> <p>23 MR. BRENNAN: Objection.</p> <p>24 A. Other than what we talked about on the M&C.</p> <p>25 Q. (BY MR. KOTULA) Right. And nowhere does it</p>	<p style="text-align: right;">Page 165</p> <p>1 report that, I believe, was marked today as Exhibit 2.</p> <p>2 And, specifically, I want to ask you a</p> <p>3 little bit about your opinions in this case with respect</p> <p>4 to the duties and obligations that you say are due from</p> <p>5 Pacific Employers, PEIC, and from Hartford to Troy</p> <p>6 Belting.</p> <p>7 Is that okay?</p> <p>8 A. Yes.</p> <p>9 (Pause in the proceedings from 2:44 to</p> <p>10 2:45 p.m.)</p> <p>11 Q. (BY MR. LEASURE) And so in that vein, I want</p> <p>12 to ask you a couple of questions about your earlier</p> <p>13 testimony about your report. And, hopefully, we can cut</p> <p>14 this short and turn it over to Mr. Fox to ask his</p> <p>15 questions so we can get you out of here before the seven</p> <p>16 hours are up for our deposition today.</p> <p>17 Just as a housekeeping matter, you are</p> <p>18 appearing here today pursuant to subpoenas that were</p> <p>19 issued by the parties; is that correct?</p> <p>20 A. Yes.</p> <p>21 Q. And are you aware that subpoenas were issued by</p> <p>22 more than one insurance company in this case requesting</p> <p>23 your appearance today?</p> <p>24 A. Probably. I don't know if I saw all three of</p> <p>25 them or not. I've been gone for almost a month.</p>

<p style="text-align: right;">Page 166</p> <p>1 Q. Okay. So if I told you that Hartford issued a 2 subpoena requesting your testimony, that would not be 3 unusual? 4 A. No. 5 Q. Okay. Would you say that an insurance policy is 6 a contract? 7 A. Pardon me? 8 Q. Would you say that an insurance policy is a 9 contract? 10 A. Yes. 11 Q. And would you say that the parties to that 12 contract would be the policyholder on the one hand and the 13 insurance company issuing the policy on the other hand? 14 A. Yes. 15 Q. Okay. And earlier today, and also in your 16 report, you state that certain duties that you believe are 17 due to the policyholder from an insurance company are 18 contained in insurance contracts; is that fair? 19 A. Yes. 20 Q. And if I asked you to look at your report, which 21 we've marked as Exhibit 2, if you look at page 4, the very 22 first sentence of your opinion states: Claims handling 23 entails the fulfillment of the insurance company's 24 promises to its insured as stated in the insurance policy. 25 Did I read that correctly?</p>	<p style="text-align: right;">Page 168</p> <p>1 deposition testimony in this case? 2 A. Not before this, no. 3 Q. Have you -- 4 A. I'm sorry; yes, I did. 5 Q. You reviewed his deposition testimony? 6 A. Yes, I did. 7 Q. Did you review anybody else's deposition? 8 A. No, I don't think so. 9 Q. Did you review any other documents, other than 10 what are listed on this? 11 A. No. 12 Q. But you did review Mr. Heinze' deposition? 13 A. Right. 14 Q. When did you do that? 15 A. Right after I got back. I got back about the 16 12th, and whenever -- shortly thereafter -- a week -- 17 whatever -- a week or so after it was taken; I don't know. 18 Q. Okay. How did you get his deposition testimony? 19 A. From Mr. Brennan. 20 Q. And did you have occasion to speak with 21 Mr. Brennan about that testimony? 22 A. Yes. 23 Q. Okay. When did you speak with Mr. Brennan about 24 that? 25 A. I guess last Friday or so; I'm not quite sure.</p>
<p style="text-align: right;">Page 167</p> <p>1 A. Yes. 2 Q. And that's your opinion? 3 A. Yes. 4 Q. And so you believe that the claims handling 5 duties that flow from an insurance company to its 6 policyholder are contained in the insurance policy? 7 A. Yes. 8 Q. I'd also like to ask you to take a quick 9 look -- I believe, we've previously reviewed it, which is 10 Exhibit B to your report. It's the "documents reviewed" 11 section. 12 A. I just saw it here a minute ago. 13 MR. BRENNAN: It's tricky. 14 Q. (BY MR. KOTULA) And you have Exhibit B in 15 front of you? 16 A. Yes. 17 Q. And those are the documents you reviewed -- 18 A. Right. 19 Q. -- before your testimony today? 20 A. Yes. 21 Q. And you testified that you didn't review any 22 other or additional documents since the time that you 23 prepared this report? 24 A. No. 25 Q. So, for instance, you didn't review Mr. Heinze'</p>	<p style="text-align: right;">Page 169</p> <p>1 Q. Okay. Is there anything else that you reviewed 2 that's not listed on Exhibit B? 3 A. Not that I can recall. 4 Q. Do you recall reviewing the exhibits that were 5 attached to Mr. Heinze' deposition? 6 A. Yes. 7 Q. Which exhibits do you recall reviewing? 8 A. All of them. 9 Q. And are there any exhibits attached to 10 Mr. Heinze' deposition that aren't here on Exhibit B? 11 A. There could have been some that are duplicates; 12 I'm not sure. 13 Q. Okay. And I don't see any insurers' policies 14 listed here on Exhibit B. 15 Did you review any specific insurance 16 policies in preparation for this report that you issued on 17 September 30th? 18 A. No. 19 Q. Did you review any insurance policies that were 20 issued to Troy Belting after the time that you issued this 21 report? 22 A. No. 23 Q. Did you review any of the insurance policies 24 that were attached to Mr. Heinze' deposition? 25 A. I might have; I can't recall.</p>

<p style="text-align: right;">Page 170</p> <p>1 Q. Okay. But you don't recall if you reviewed them 2 or not?</p> <p>3 A. No, I don't.</p> <p>4 Q. And you hadn't reviewed --</p> <p>5 A. I reviewed them all. I mean, I reviewed 6 everything there, but I don't remember specifically the 7 policy, though.</p> <p>8 Q. Okay. And you didn't review any insurance 9 policies prior to the time that you issued this report on 10 September 30th of 2015?</p> <p>11 MR. BRENNAN: Objection.</p> <p>12 A. No.</p> <p>13 Q. (BY MR. LEASURE) So if I turn back to page 4 14 of your report that says that claims handling entails the 15 fulfillment of the insurance --</p> <p>16 THE REPORTER: You're going to have to read 17 slower than that.</p> <p>18 MR. LEASURE: Sorry.</p> <p>19 Q. (BY MR. LEASURE) -- claims handling entails 20 the fulfillment of the insurance company's promises to its 21 insured as stated in the insurance policy, that's a 22 general statement of what your opinion is of the duties 23 that flow between the parties?</p> <p>24 A. Where are you; I'm sorry?</p> <p>25 Q. The first line of your opinions on page 4 of</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. In this particular case, which involves asbestos 2 bodily injury claims by Troy Belting -- or against Troy 3 Belting, you are aware and you did testify that Troy 4 Belting's defense is being covered 100 percent for these 5 asbestos bodily injury claims; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Are you aware of Troy Belting paying any 8 indemnity payments or settlements or judgments --</p> <p>9 A. Yes.</p> <p>10 Q. -- to any of the asbestos bodily injury claims?</p> <p>11 A. Yes.</p> <p>12 Q. Troy Belting is paying them?</p> <p>13 A. Pardon me?</p> <p>14 Q. You're aware that Troy Belting is paying them, 15 or are you aware that their insurance companies are paying 16 them?</p> <p>17 A. Insurance companies paid them.</p> <p>18 Q. Okay. So if you had an asbestos bodily injury 19 claim, and you were defended by your insurance company 20 fully, and your insurance company paid the judgment or the 21 settlement fully, would you say that they are doing 22 everything possible to protect the interest of the insured 23 in defending against the loss related to that claim?</p> <p>24 A. Well, not in this particular case. We're 25 talking about the possibilities of going back pro rata</p>
<p style="text-align: right;">Page 171</p> <p>1 Exhibit 2.</p> <p>2 A. Okay. What were you asking me; that first 3 sentence?</p> <p>4 Q. I'm asking about that first sentence, yes.</p> <p>5 That's a general statement of your opinion, 6 and it's not based on a review any particular policy?</p> <p>7 A. That's just based on my experience.</p> <p>8 Q. Okay. But it's not based on the language that's 9 contained in, for instance, The Hartford policy issued to 10 Troy Belting?</p> <p>11 A. No.</p> <p>12 Q. And it's not based on, say, information 13 contained in a Pacific Employers policy that would have 14 been issued to Troy Belting?</p> <p>15 A. No.</p> <p>16 Q. But you do say that the promises are contained 17 in the insurance policy; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. Let me ask you about the next sentence. It 20 says: When handling a claim on behalf of an insured, the 21 claim staff of an insurance carrier must do everything 22 possible to protect the interests of the insured in 23 defending against loss related to the claim.</p> <p>24 Did I read that correctly?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 173</p> <p>1 to -- and collecting some money from Troy Belting. So at 2 the time that they were doing the investigation and doing 3 the defense, they should have been looking into other 4 carriers, particularly Jamestown and Unigard, if they 5 intended to come forward in the next 30 years and try and 6 get some money from Troy Belting. So I don't think they 7 were doing everything.</p> <p>8 Q. Okay. But they were doing everything to defend 9 their policyholder for those claims.</p> <p>10 You're not alleging that there's any bad 11 faith or undue claims handling practices here with respect 12 to defending the underlying policies, are you, in the 13 claim?</p> <p>14 A. Not in the actual defense of the policies -- I 15 mean, the actual defense of the claims. I'm talking about 16 the fact that they didn't go back and try to find out 17 about other policies when they had an opportunity 30 years 18 ago.</p> <p>19 Q. Well, when they had an opportunity 30 years ago, 20 they certainly did, right? We just spent about six hours 21 looking over exhibits that reference the Pennell claim and 22 the correspondence from 1976, 1977, 1978.</p> <p>23 That was, obviously, an investigation into 24 prior insurance coverage; was it not?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 174</p> <p>1 Q. Okay.</p> <p>2 A. Some.</p> <p>3 Q. So they did, right?</p> <p>4 Are you aware of any other prior coverage?</p> <p>5 MR. BRENNAN: Objection.</p> <p>6 Q. (BY MR. LEASURE) Are you aware of any gaps in</p> <p>7 insurance from 1974 to 1977 to the present?</p> <p>8 A. No.</p> <p>9 Q. So they would be investigating that very same</p> <p>10 coverage block that we looked at in the earlier exhibits,</p> <p>11 correct?</p> <p>12 A. Well, yeah, sure.</p> <p>13 Q. Right. And they were doing that in the 1970s,</p> <p>14 right?</p> <p>15 A. Yeah.</p> <p>16 Q. Which was at -- near or at the time of the</p> <p>17 alleged gap in insurance coverage, right?</p> <p>18 A. What I'm saying and what I had said and what I</p> <p>19 intend to opine on is the fact that in 1977, in 1978, if</p> <p>20 they had intended, like he indicated, that there's going</p> <p>21 to be a pro rata distribution from any gaps that the</p> <p>22 policyholder might have as far as coverage, they should</p> <p>23 have been, in my estimation, trying to find out harder if</p> <p>24 there is any coverage and who has it and what's the -- and</p> <p>25 what's the limited liability on those coverages.</p>	<p style="text-align: right;">Page 176</p> <p>1 underlying claims that have been paid for 100 percent</p> <p>2 defense and indemnity?</p> <p>3 A. Those are not the ones that it involved?</p> <p>4 Q. Well, I'm asking you: What harm happened in the</p> <p>5 defense of the underlying claims? They're being paid for</p> <p>6 100 percent, correct?</p> <p>7 A. They were paid for 100 percent at the time.</p> <p>8 It's my understanding in this lawsuit that Hartford and</p> <p>9 Pacific Employers are going back and trying to get Troy</p> <p>10 Belting to pay the time before '74, or whatever it was.</p> <p>11 It might be in some of those cases.</p> <p>12 Q. And that's right. And that's because PEIC and</p> <p>13 Hartford believe they've paid too much or they've</p> <p>14 overpaid.</p> <p>15 Is that a fair characterization of what's</p> <p>16 happening there?</p> <p>17 A. They paid too much or they --</p> <p>18 Q. Well, they think they paid more than their fair</p> <p>19 share; is that accurate? Is that how you would understand</p> <p>20 the lawsuit?</p> <p>21 A. Yes. I mean, they think that there should be</p> <p>22 contribution from the policyholder or from some other</p> <p>23 carrier.</p> <p>24 Q. Right. And so that would benefit PEIC or</p> <p>25 Hartford, right, because they think they've paid too much?</p>
<p style="text-align: right;">Page 175</p> <p>1 Q. And you're saying they should have done that in</p> <p>2 1977?</p> <p>3 MR. BRENNAN: Objection.</p> <p>4 A. Well, sure. You just said that INA was coming</p> <p>5 down -- came down with that decision that said, you know,</p> <p>6 we'll go back -- not manifestation, but in pro rata, when</p> <p>7 you were first exposed to the asbestos.</p> <p>8 Q. (BY MR. LEASURE) Right. But in this case, the</p> <p>9 Pennell case, which is the first one we know about, and</p> <p>10 every other case that we know about, the insurance</p> <p>11 companies paid everything, right?</p> <p>12 A. They paid it up to this point, yes.</p> <p>13 Q. Right.</p> <p>14 A. But now they're asking -- it's my understanding</p> <p>15 they're asking for some reimbursement from the</p> <p>16 policyholder on gaps in the coverage or at least beyond</p> <p>17 Pacific Employers.</p> <p>18 Q. Right. But to your knowledge, has Troy Belting</p> <p>19 paid for any of those gaps?</p> <p>20 A. Not at this point, that I know of.</p> <p>21 Q. So how are they harmed in the defense of those</p> <p>22 particular claims?</p> <p>23 A. By asking for it. I mean, you have a lawsuit</p> <p>24 right now asking for it.</p> <p>25 Q. Right. But what does that have to do with the</p>	<p style="text-align: right;">Page 177</p> <p>1 A. Yes.</p> <p>2 Q. Right. But Troy Belting hasn't paid too much;</p> <p>3 have they? They haven't paid anything.</p> <p>4 A. Not at this point, no.</p> <p>5 Q. Okay. The second paragraph of your opinion says</p> <p>6 that: There's a duty by the carrier to advise the insured</p> <p>7 in a timely manner that it intends to seek recovery</p> <p>8 against either the insured or other insurance carriers</p> <p>9 that issued policies to that insured.</p> <p>10 Do you see that in the second paragraph?</p> <p>11 A. Under "Opinion"?</p> <p>12 Q. Yes.</p> <p>13 A. The duty includes the duties -- is that what</p> <p>14 you're saying?</p> <p>15 Q. Yes.</p> <p>16 A. Yeah, it's one of -- I'm sorry; go ahead and</p> <p>17 read it again.</p> <p>18 Q. Yeah. Well, I'm just asking if I read it</p> <p>19 correctly. You can go ahead and read the first sentence.</p> <p>20 I just have a couple of quick questions about it.</p> <p>21 A. (Witness reviews document.)</p> <p>22 Okay.</p> <p>23 Q. That duty that you reference there in that</p> <p>24 sentence, is that derived from the insurance policy?</p> <p>25 A. Well, only from the standpoint that, like I said</p>

<p style="text-align: right;">Page 178</p> <p>1 earlier, if you're going to defend them and then you're 2 going to ask for some money back, you should, at some 3 point, tell them when you're going to do that or if you're 4 going to do that. This is -- my understanding, some of 5 these are 20, 25 years old that they're asking them to 6 come back and pay for a pro rata share. 7 Q. I'm asking you if the duty to advise the insured 8 that it intends to seek recovery against either the 9 insured or other insurance carriers, is that language 10 included in the policy anywhere? 11 A. Not there, no. 12 Q. Okay. 13 A. No. 14 Q. All right. Earlier Mr. Kotula asked you about 15 point 13 in your report on the summary of facts, page 3. 16 A. Yes. 17 Q. Do you see that, paragraph 13? 18 A. Yes. 19 Q. And you state: On several occasions, Troy 20 Belting or its agents requested that PEIC and Hartford 21 help it investigate its older insurance carriers and help 22 it preserve its rights under older insurance policies. 23 Do you see that? 24 A. Right. 25 Q. And when is that?</p>	<p style="text-align: right;">Page 180</p> <p>1 A. And under the defense clause, I think they have 2 an obligation. 3 Q. Okay. Why don't we mark the policy, and you can 4 kind of tell me what you're talking about. 5 (Exhibit 20 marked.) 6 MR. KOTULA: Off the record. 7 (Pause in the proceedings from 3:00 to 8 3:01 p.m.) 9 Q. (BY MR. LEASURE) Mr. O'Malley, we've marked as 10 Exhibit 20, The Hartford policy issued to Troy that's for 11 the policy period 1992 to 1993. 12 A. Okay. 13 Q. Have you had a chance to at least take a quick 14 look at that policy? 15 A. Okay. 16 Q. And can you tell me where the duty to defend is 17 contained in that policy; what page? If you look at the 18 bottom of the document, it will have a Bates number. 19 A. I'm looking right now. 20 Q. Okay. 21 A. Insuring agreement. 22 Q. Right. On the bottom right-hand side, is there 23 a number? 24 A. 0474. 25 Q. Okay. Can you tell me where the duty to defend</p>
<p style="text-align: right;">Page 179</p> <p>1 A. Well, I don't think it's actually until 2009, 2 when they started making noise about getting money back 3 for them, that they asked for that kind of information -- 4 for that help. That's my understanding. 5 Q. Okay. And you go on to say that PEIC and 6 Hartford declined to perform those functions? 7 A. They've never done it. 8 Q. All right. And never placed Unigard/Jamestown 9 on notice of any of the underlying asbestos claims. 10 Do you see that? 11 A. Yes. 12 Q. Can you point to any policy provisions in either 13 a PEIC or a Hartford insurance policy that would require 14 PEIC and Hartford to investigate older insurance carriers? 15 A. Well, if the circumstances are like they are 16 now, where Hartford and PEIC is asking the policyholder to 17 contribute money for past claims that they've defended and 18 settled, then certainly it is within the defense clause of 19 the insuring agreement that they should have told them at 20 that time or go back and find out at that time if there is 21 any other insurance. 22 Q. And you say that's within the insurance 23 clause -- insuring clause of the policy? 24 A. Insuring agreement. 25 Q. All right.</p>	<p style="text-align: right;">Page 181</p> <p>1 is contained on that page? 2 A. Well, it says, We will have the right and duty 3 to defend, right there in the insuring agreement. 4 Q. Right. Let me read it to you. 5 It says, We have the right and duty to 6 defend any suit seeking those damages. 7 A. Right. 8 Q. We may, at our discretion, investigate any 9 occurrence and settle any claim or suit that may result. 10 A. Right. 11 Q. Okay. And it's your opinion that that is the 12 language that would require, for instance in this case, 13 Hartford to search for and notice other insurance 14 companies of potential coverage? 15 A. Well, notice them only because -- yeah. Sure, 16 it would, for two reasons. The defense clause -- of 17 course, the insuring agreement is to protect the 18 policyholder. And to protect the policyholder, if you 19 have a suit, you defend them. If you're defending them, 20 you want to find out whether there's other insurance 21 available, any concurrent insurance, any excess insurance, 22 any insurance that might happen before you or whatever. 23 But this is not only for the policyholder; 24 this is also for Hartford and Pacific Employers. As an 25 adjustor, you want to make sure that your company is not</p>

<p style="text-align: right;">Page 182</p> <p>1 paying something they shouldn't be paying.</p> <p>2 Q. Well, that's right. And that would be -- you've</p> <p>3 testified to -- you know, I'll shorthand it -- but good</p> <p>4 and generally-accepted claims handling practices, right?</p> <p>5 A. Right.</p> <p>6 Q. Right. And that's because, in this case, if you</p> <p>7 went and searched for other insurance that might</p> <p>8 potentially pay for the same claim, that's going to</p> <p>9 benefit an insurance company that is otherwise paying 100</p> <p>10 percent of the claim; right?</p> <p>11 A. Right.</p> <p>12 Q. And that's what we've have here. We have</p> <p>13 insurance companies paying 100 percent of the claim. And</p> <p>14 it would be in the insurance companies' interest to find</p> <p>15 additional or other insurance, correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Now, if you look at --</p> <p>18 MR. FOX: What's the Bates number, please?</p> <p>19 MR. LEASURE: 474.</p> <p>20 A. If they do that, then, of course, they're</p> <p>21 penalizing the policyholder.</p> <p>22 Q. (BY MR. LEASURE) They're not penalizing the</p> <p>23 policyholder in this particular case, though, are they,</p> <p>24 because 100 percent of the defense and indemnity have been</p> <p>25 paid for?</p>	<p style="text-align: right;">Page 184</p> <p>1 other obligation or liability to pay sums or perform acts</p> <p>2 or services is covered, unless explicitly provided for</p> <p>3 under supplementary payments coverages A and B.</p> <p>4 Is that right?</p> <p>5 A. Right.</p> <p>6 Q. So at least in this policy, it says specifically</p> <p>7 that there's no other obligation or liability to perform</p> <p>8 acts or services, unless it's in A and B, right?</p> <p>9 A. To pay sums or perform acts or services.</p> <p>10 Q. Sure.</p> <p>11 A. Okay.</p> <p>12 Q. Right.</p> <p>13 A. Okay.</p> <p>14 Q. So, in other words, there's no other obligation</p> <p>15 in this clause requiring an insurance company to search</p> <p>16 for and notice other insurance companies of a potential</p> <p>17 claim; is there?</p> <p>18 MR. BRENNAN: Objection.</p> <p>19 Q. (BY MR. LEASURE) It's not listed there?</p> <p>20 It doesn't say that, right?</p> <p>21 MR. BRENNAN: Objection.</p> <p>22 A. Well, I think you've got to go back to the 1A,</p> <p>23 and then it says -- this says "no other obligation." And</p> <p>24 1A already talks about defense, which I'm saying expanded</p> <p>25 -- which is including -- which includes the carriers</p>
<p style="text-align: right;">Page 183</p> <p>1 MR. BRENNAN: Objection.</p> <p>2 A. As far as I can see, certainly they're trying to</p> <p>3 get part of that back.</p> <p>4 Q. (BY MR. LEASURE) Right. But that doesn't have</p> <p>5 anything to do with the defense in the case, which is what</p> <p>6 this clause says, right?</p> <p>7 MR. BRENNAN: Objection.</p> <p>8 A. It's my opinion that that defense also extends</p> <p>9 to what we just talked about, pulling together additional</p> <p>10 coverages.</p> <p>11 Q. (BY MR. LEASURE) Okay. And it does say that,</p> <p>12 that the insurance company may investigate at our</p> <p>13 discretion, correct?</p> <p>14 A. Right.</p> <p>15 Q. So it's the insurance company's choice whether</p> <p>16 to do that or not?</p> <p>17 A. Yes.</p> <p>18 Q. If you move further down, you'll see that there</p> <p>19 is a -- there's a "but" and then there's a 1 and a 2</p> <p>20 clause. And I'd like to read this other paragraph to you</p> <p>21 right there. It says --</p> <p>22 A. Which one?</p> <p>23 Q. If you keep moving on, underneath the Duty to</p> <p>24 Defend, Insuring Agreement 1A, then there's a 1 and a 2.</p> <p>25 And you see underneath 2, it says: No</p>	<p style="text-align: right;">Page 185</p> <p>1 looking for other insurance.</p> <p>2 Q. (BY MR. LEASURE) Okay.</p> <p>3 A. And this says "no other obligation."</p> <p>4 Q. Okay. Maybe that's where I misunderstood you.</p> <p>5 You believe that the defense of a claim</p> <p>6 that is covered under a CGL policy includes the duty and</p> <p>7 the obligation to search for and notice other carriers of</p> <p>8 a potential claim?</p> <p>9 MR. BRENNAN: Objection.</p> <p>10 A. That's correct.</p> <p>11 Q. (BY MR. LEASURE) And you think that the</p> <p>12 language right here in the duty to defend that we just</p> <p>13 looked at, for instance, in this 1992 policy, is what</p> <p>14 requires that?</p> <p>15 A. Yes.</p> <p>16 Q. And it's the duty of an insurance company to do</p> <p>17 that?</p> <p>18 A. In defending the policyholder in the full -- the</p> <p>19 best they can, because it's for their -- as well as their</p> <p>20 own -- it's for the policyholder as well as for the</p> <p>21 insurance carrier.</p> <p>22 Q. Well, I don't have any doubt that it's for the</p> <p>23 insurance company's benefit if they can find somebody else</p> <p>24 to pay for it; no question.</p> <p>25 But this policy is not the policy that's</p>

<p style="text-align: right;">Page 186</p> <p>1 issued by the insurance company, for instance, with 2 another insurance company; is it? 3 A. No. 4 MR. BRENNAN: Objection. 5 Q. (BY MR. LEASURE) We talked about it earlier, 6 right; it's a contract between, in this case, Troy Belting 7 and Hartford, right? 8 A. Yeah. 9 Q. So we're not contracting with other insurance 10 companies; are we? 11 A. No. You're being paid a premium to defend the 12 policyholder in suits, and that defense includes looking 13 for other policies, putting other carriers on notice, 14 looking for excess, and that sort of thing. 15 Q. But you're not aware of anything that says that 16 in the policy; this policy or any other policy? 17 MR. BRENNAN: Objection. 18 A. Other than the fact that you have a duty to 19 defend. And that's part of the defense, in my estimation. 20 Q. (BY MR. LEASURE) Are you aware of any court 21 case in any state in the United States that tells that? 22 MR. BRENNAN: Objection. 23 A. No, I'm not aware. 24 Q. (BY MR. LEASURE) Earlier, you talked about 25 that obligation to look for and notice carriers as a team</p>	<p style="text-align: right;">Page 188</p> <p>1 Q. Now, they are an insurance agent; is that right? 2 A. Yes. 3 Q. And they are Troy Belting's insurance agent; is 4 that right? 5 A. Yes. 6 Q. And so for purposes of communicating with or 7 placing insurance with or from insurance companies, would 8 you expect Troy Belting to go through their agent for 9 those purposes? 10 MR. BRENNAN: Objection. 11 A. To find insurance? 12 Q. (BY MR. LEASURE) Yes. 13 A. Yes. 14 Q. And so Nicoll & MacChesney would be Troy 15 Belting's agent? 16 A. Right. 17 Q. And so for purposes of coordinating with or 18 communicating with insurance companies, Troy Belting would 19 do that through its broker? 20 A. Say that again; I'm sorry. 21 Q. Troy Belting would communicate with insurance 22 companies through its agent; is that correct? 23 A. Yes. 24 Q. And Nicoll & MacChesney would be that agent? 25 A. Right.</p>
<p style="text-align: right;">Page 187</p> <p>1 effort. 2 Do you remember that testimony? 3 A. No, I don't -- wait. Say it again, please. 4 I'm sorry. 5 Q. You used the term "team effort" once or twice. 6 And I believe that you were using it with reference to 7 locating and noticing insurance companies of a claim. 8 A. Yes. 9 Q. And so the team effort would include the 10 policyholder; is that correct? 11 A. Yes. 12 Q. And it would include an agent or a broker? 13 A. Right. 14 Q. And it would include an insurance company as 15 well? 16 A. Yes. 17 Q. Is there anybody else that you include in that 18 team effort? 19 A. I think that would probably be it. 20 Q. In this case, we've looked at a series of 21 documents from Nicoll & MacChesney. 22 Do you recall those documents or remember 23 the name of that insurance company, that insurance 24 brokerage? 25 A. Yes.</p>	<p style="text-align: right;">Page 189</p> <p>1 Q. All right. So you would expect that if an 2 insurance company was dealing with Nicoll & MacChesney 3 regarding policies issued to Troy Belting, that Nicoll & 4 MacChesney could speak for Troy Belting as its agent -- 5 MR. BRENNAN: Objection. 6 Q. (BY MR. LEASURE) -- at least for purposes of 7 the insurance? 8 MR. BRENNAN: Objection. 9 A. They should be able to. 10 Q. (BY MR. LEASURE) And we did look at a couple 11 of documents earlier that referenced a search for 12 insurance policies. 13 Do you remember those documents? 14 A. Right. 15 Q. And do you remember that Nicoll & MacChesney was 16 involved in those, at least in the inquiries and in the 17 searches? 18 A. Yes. 19 Q. Do you remember that we also had documented 20 testimony to the effect that -- when a Pacific Employers 21 or INA employee went to Nicoll & MacChesney to look for 22 documents and materials? 23 A. Yes. 24 Q. And so would you expect that the employee from 25 PEIC or INA was going to Nicoll & MacChesney to look for</p>

<p style="text-align: right;">Page 190</p> <p>1 Troy Belting materials?</p> <p>2 A. Yes.</p> <p>3 Q. And you expect that Nicoll & MacChesney would</p> <p>4 have Troy Belting insurance-related materials?</p> <p>5 A. I would think so, yes.</p> <p>6 Q. Right. And Nicoll & MacChesney was operating on</p> <p>7 behalf of Troy Belting?</p> <p>8 A. Well, they were operating -- purchasing</p> <p>9 insurance for them, yes.</p> <p>10 Q. Okay.</p> <p>11 A. Through them.</p> <p>12 Q. And you would expect that, for purposes, for</p> <p>13 instance, of claims notification, that anything that</p> <p>14 Nicoll & MacChesney did would be on behalf of Troy</p> <p>15 Belting?</p> <p>16 A. Anything they did, yes.</p> <p>17 Q. Right. So if they had information or knowledge</p> <p>18 about a particular claim at Nicoll & MacChesney, they</p> <p>19 would have had that information from or through Troy</p> <p>20 Belting?</p> <p>21 MR. BRENNAN: Objection.</p> <p>22 A. I don't understand the question.</p> <p>23 Q. (BY MR. LEASURE) Would Nicoll & MacChesney go</p> <p>24 out and have claim information about Troy Belting that it</p> <p>25 got anywhere, except from Troy Belting?</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. You're not talking about the specific notice</p> <p>2 requirements that are in the policy?</p> <p>3 A. No.</p> <p>4 Q. Because that's the policyholder's duty?</p> <p>5 A. Or the agent. I mean, the reality is that the</p> <p>6 agent is the one. And the agent says that it put Unigard</p> <p>7 and everybody else on notice.</p> <p>8 Q. Right. That's what I'm asking. Okay.</p> <p>9 And I'm not sure I understood your earlier</p> <p>10 testimony, but I do have some notes that I'd like to ask</p> <p>11 you about, and that is: It is your opinion and you have</p> <p>12 in your report that you believe that PEIC and Hartford</p> <p>13 violated claims standards to Troy Belting; is that your</p> <p>14 testimony?</p> <p>15 A. Which -- which one are you talking about?</p> <p>16 Q. Well, I'm looking at notes, and I believe you</p> <p>17 said that they violated their duties --</p> <p>18 A. I think --</p> <p>19 Q. That's certainly in your conclusion.</p> <p>20 PEIC and Hartford violated their duties to</p> <p>21 Troy Belting by seeking contribution; is that what you</p> <p>22 state? It's in your conclusion on page 6.</p> <p>23 A. Page 6?</p> <p>24 Q. Yeah, in your conclusion.</p> <p>25 A. Yeah, that's what I said.</p>
<p style="text-align: right;">Page 191</p> <p>1 A. Any claim information?</p> <p>2 MR. BRENNAN: Objection.</p> <p>3 Q. (BY MR. LEASURE) Claim information.</p> <p>4 A. Not that I know of. I mean, they would...</p> <p>5 Q. Nicoll & MacChesney would then notify the</p> <p>6 insurance companies that it thought would be on the risk</p> <p>7 of a particular claim; is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. So the agent would be the one who would put the</p> <p>10 insurance companies on notice of a claim?</p> <p>11 MR. BRENNAN: Objection.</p> <p>12 A. Anybody can put the insurance company on -- the</p> <p>13 other carriers on it; the policyholder, the agent, or one</p> <p>14 of the other carriers.</p> <p>15 Q. (BY MR. LEASURE) Okay. But the obligation to</p> <p>16 give notice is contained in insurance policies; is that</p> <p>17 right?</p> <p>18 A. That's correct.</p> <p>19 Q. And that obligation is the policyholder's</p> <p>20 obligation, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. So when you talk about notice and it could come</p> <p>23 from anywhere, you're talking about constructive notice or</p> <p>24 just knowledge of a claim; is that right?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. Okay.</p> <p>2 A. Without taking the necessary steps to</p> <p>3 investigate previous insurance --</p> <p>4 Q. Okay. What I want to -- what I want to ask you</p> <p>5 is: Is that sentence -- does that conclusion and that</p> <p>6 opinion that what you want to render in this case, are you</p> <p>7 making that for all time, for instance, from 1949 to the</p> <p>8 present? I'm trying to pin you down for when you believe</p> <p>9 that PEIC and Hartford violated their duties to Troy</p> <p>10 Belting.</p> <p>11 MR. BRENNAN: Objection.</p> <p>12 Q. (BY MR. LEASURE) Right?</p> <p>13 A. Yeah.</p> <p>14 Q. Because we have already discussed the fact that</p> <p>15 100 percent of the defense and 100 percent of the</p> <p>16 indemnity are being covered for the underlying asbestos</p> <p>17 claims, right?</p> <p>18 MR. BRENNAN: Objection.</p> <p>19 A. It's been covered at this point, yes.</p> <p>20 Q. (BY MR. LEASURE) Right. Okay. So when did</p> <p>21 they violate their duties?</p> <p>22 A. When they -- well, when they started asking for</p> <p>23 the pro rata on the cases that they settled and the cases</p> <p>24 they defended.</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">Page 194</p> <p>1 A. And my -- my opinion says that if they knew that 2 this was going to happen, which they should have, 20, 30 3 years ago, they should have been going back and seeing who 4 the carriers were and trying to make some determination as 5 to who the insurance carrier was before they came on. 6 Q. Right. And we know they did that at least in 7 1977 with the Pennell file, right? 8 A. Well, they made an attempt to, but we didn't get 9 any information on it. 10 Q. And they asked Troy Belting to help in that 11 information -- the gathering of that information at the 12 time, correct? 13 A. Yes. 14 Q. And they asked -- Troy Belting's agent at Nicoll 15 & MacChesney was involved in the search, correct? 16 A. Yes. 17 Q. And Unigard was involved in the search, right? 18 A. I don't know. They didn't say. I mean, they -- 19 Q. Well, you know that -- you know Unigard at least 20 received correspondence and had inquiries about the 21 coverage, correct? 22 A. That's correct. 23 Q. So somebody at least asked Unigard if they 24 issued policies? 25 A. Well, they were put on notice apparently by the</p>	<p style="text-align: right;">Page 196</p> <p>1 They should have done this back 25 or 30 years ago. And 2 you said -- you said, Well, they did. 3 Well, they didn't, because they don't have 4 the information. 5 Q. But you think they might have the information 6 better in 2009 than they did in 1977? 7 A. No, they would not. 8 Q. Okay. And I guess what I would like you to tell 9 me is, are you saying that they're violating their duties 10 in 2009 by asking for an indemnification or an allocation 11 pursuant to New York law? 12 MR. BRENNAN: Objection. 13 A. Yes, because -- well, they're asking for it 14 because they didn't do the right thing; they didn't have 15 the right claim practices in place at the time of '74/'75, 16 whenever this Pennell case came up. That's when they 17 should have gone back, and that's when they should have 18 established. They waited 25, 30 years, and decided, Hey, 19 there's some uncovered places here that we need to find 20 out from Troy Belting because we don't know who it was 21 before us. And the reason we don't know who it was before 22 us is because we didn't look into it enough. 23 Q. Well, let me ask you this question on behalf of 24 Hartford: Hartford wasn't asked to look into that in 1976 25 or 1977; were they?</p>
<p style="text-align: right;">Page 195</p> <p>1 agent, they said. 2 Q. Okay. 3 A. And the response was, We don't think it's 4 material. 5 Q. Right. Okay. But they did investigate the 6 prior coverages, right? 7 A. I don't know that -- 8 Q. Troy Belting did, right? 9 MR. BRENNAN: Objection. When are you 10 talking about? 11 MR. LEASURE: 1977. 12 Q. (BY MR. LEASURE) You're saying that PEIC and 13 Hartford violated their duties without taking the 14 necessary steps to investigate Troy Belting's previous 15 insurance carriers. 16 And I want to know who that is or when that 17 is, and is it anything different than what they were doing 18 in 1977? 19 A. Yeah, of course, it is. Now it's 30 years 20 later, 20 years later, they're trying to -- in 2009, they 21 were asking Troy Belting to make a contribution. Now, if 22 they would have done that work back 20, 30 years ago, they 23 might have had the information and would not have put Troy 24 Belting on notice for any pro rata share. 25 But I'm saying that this is old stuff.</p>	<p style="text-align: right;">Page 197</p> <p>1 A. No. 2 Q. And Hartford was not in any kind of a 3 contractual relationship with Troy Belting at the time; 4 were they? 5 A. No. 6 Q. But Nicoll & MacChesney was Troy Belting's 7 broker at the time, right? 8 A. Yes. 9 Q. And they did look into this issue, right? 10 A. They said they did. They said they put Unigard 11 on notice. 12 Q. And they also put Pacific Employers on notice, 13 right? 14 A. Yes. 15 Q. And Pacific Employers looked for the prior 16 insurance coverage as well; didn't they? 17 A. Well, I don't know how much. I mean, they 18 apparently didn't get the information. 19 Q. Well, they looked, though? 20 A. I don't know. 21 Q. Well, you saw the exhibits that were entered, to 22 that realm, correct? 23 A. Well, I didn't see where they found any 24 information on it, though. 25 Q. Well, you were asked a series of questions about</p>

<p style="text-align: right;">Page 198</p> <p>1 Mr. Ranalli's activities at his deposition.</p> <p>2 Do you remember that?</p> <p>3 A. Right.</p> <p>4 Q. You remember that handwritten exhibit?</p> <p>5 A. Right.</p> <p>6 Q. And the testimony that he went and looked -- and</p> <p>7 went to Nicoll & MacChesney to search for any indication</p> <p>8 that there might be policies?</p> <p>9 A. Yeah.</p> <p>10 Q. What other kind of an investigation do you think</p> <p>11 he should have made?</p> <p>12 A. He should have had the policy numbers and the</p> <p>13 policy periods.</p> <p>14 Q. Policy numbers and policy periods for an</p> <p>15 insurance company that was not his own?</p> <p>16 A. Pardon me?</p> <p>17 Q. You're telling me Ranalli should have had</p> <p>18 insurance company policy numbers; for what insurance</p> <p>19 company?</p> <p>20 A. For Unigard or whoever was behind him.</p> <p>21 Q. You're telling me that to search for other</p> <p>22 insurance policies, that an employee of INA or Pacific</p> <p>23 Employers should have insurance policy numbers of a</p> <p>24 different insurance company?</p> <p>25 A. What was he there for?</p>	<p style="text-align: right;">Page 200</p> <p>1 A. Yeah. But he didn't get the policy periods, and</p> <p>2 he didn't get the limited liabilities.</p> <p>3 Q. No, nobody has that information.</p> <p>4 That's the basis of your dispute with</p> <p>5 Unigard, right?</p> <p>6 A. Right.</p> <p>7 Q. But what I'm asking is: What should an</p> <p>8 insurance company do who knows they issued policies?</p> <p>9 They're going to be in a position to gather information</p> <p>10 that Troy Belting and his agent doesn't have or can't give</p> <p>11 them?</p> <p>12 A. Who? Who are you talking about now?</p> <p>13 Q. I'm talking about any other insurance company</p> <p>14 that you say has a duty or an obligation to look for,</p> <p>15 search, and notice other insurance companies of a</p> <p>16 particular claim.</p> <p>17 A. Yeah.</p> <p>18 Q. You think that that person has better</p> <p>19 information than Troy Belting does about his own insurance</p> <p>20 policy?</p> <p>21 MR. BRENNAN: Objection.</p> <p>22 A. He doesn't at the time he starts the search,</p> <p>23 but --</p> <p>24 Q. (BY MR. LEASURE) No. And he doesn't have the</p> <p>25 same information that the broker has either, right?</p>
<p style="text-align: right;">Page 199</p> <p>1 Q. Well, how is he going to get the information;</p> <p>2 who's going to give it to him?</p> <p>3 A. The insured -- I mean, the agent.</p> <p>4 Q. And the agent is Troy Belting's agent, right?</p> <p>5 A. Right.</p> <p>6 Q. Right. And so you don't know if he gave the guy</p> <p>7 from Pacific Employers any information with respect to</p> <p>8 policy numbers?</p> <p>9 A. He didn't write it down if he did.</p> <p>10 Q. And that's what I'm asking.</p> <p>11 A. I'm saying --</p> <p>12 Q. What other investigation would you like him to</p> <p>13 make?</p> <p>14 A. Pardon me?</p> <p>15 Q. What other investigation would you think should</p> <p>16 be made?</p> <p>17 A. He should have made the investigation who were</p> <p>18 the prior carriers, who they were, and what was -- what</p> <p>19 was the policy periods, and how much the limited</p> <p>20 liabilities were.</p> <p>21 Q. Okay. And he did that, right? He did that. He</p> <p>22 got that information from Troy Belting themselves and from</p> <p>23 the brokers; did he not?</p> <p>24 A. Got what information?</p> <p>25 Q. Who the prior carrier was.</p>	<p style="text-align: right;">Page 201</p> <p>1 A. But he went to the broker; he should have found</p> <p>2 out.</p> <p>3 Q. But what if the broker didn't have it, because</p> <p>4 you testified -- or you saw some testimony earlier about</p> <p>5 the broker claiming that it destroyed its policies and</p> <p>6 information, right?</p> <p>7 A. Right.</p> <p>8 Q. And I'm not -- I didn't review all the materials</p> <p>9 that you reviewed in preparation for this deposition, but</p> <p>10 you did review ledger entries and other things, right?</p> <p>11 A. Yes.</p> <p>12 Q. And Mr. Kotula asked you about the secondary</p> <p>13 evidence, right?</p> <p>14 A. Yeah.</p> <p>15 Q. Right. And none of that secondary evidence</p> <p>16 shows any policy numbers or policy premium information or</p> <p>17 anything of the like, right?</p> <p>18 MR. BRENNAN: Objection.</p> <p>19 A. No, it did not.</p> <p>20 Q. (BY MR. LEASURE) And they looked for it at the</p> <p>21 time, right?</p> <p>22 A. I don't know if they did or not.</p> <p>23 Q. Okay.</p> <p>24 A. What I'm saying is, 30 years later, you come to</p> <p>25 Troy Belting and ask them for a pro rata share of claims</p>

<p style="text-align: right;">Page 202</p> <p>1 that you have been settling over the last 25, 30 years.</p> <p>2 I'm saying a good claims practices would have been at the</p> <p>3 time when you go to the agent and either he has the</p> <p>4 information or has an opportunity to go back and find the</p> <p>5 information then; not 30 years, not 2009, but 1974, 1976.</p> <p>6 Q. Do you know if Troy Belting is still receiving</p> <p>7 bodily injury claims for asbestos?</p> <p>8 A. Do I know that?</p> <p>9 Q. Yes.</p> <p>10 A. I don't know that.</p> <p>11 Q. Do you know what the spread of years are? For</p> <p>12 instance, assuming that the Pennell claim was the first</p> <p>13 claim, 1976 or 1977, do you have any idea when the last</p> <p>14 claim was made against Troy Belting?</p> <p>15 A. No.</p> <p>16 Q. Are you suggesting that an insurance company</p> <p>17 that issued a policy in 1977 should have known at the time</p> <p>18 that it wanted to share the risk with an insurance policy</p> <p>19 that was issued in 1989 or 1992?</p> <p>20 MR. BRENNAN: Objection.</p> <p>21 A. I don't follow that at all. What I'm saying --</p> <p>22 what I said -- what -- that they had an opportunity at</p> <p>23 that time to find out what the policies were, a better</p> <p>24 opportunity to find out policy number, limits, policy</p> <p>25 periods in 1977 than they did in 2009, and they've been</p>	<p style="text-align: right;">Page 204</p> <p>1 least try.</p> <p>2 Q. Okay. But they should get some more information</p> <p>3 for their own purposes if they want to share a loss,</p> <p>4 because you already testified that the notice obligation</p> <p>5 of an insurance policy is the policyholder's obligation to</p> <p>6 notice insurance companies, right?</p> <p>7 MR. BRENNAN: Objection.</p> <p>8 A. That's right.</p> <p>9 Q. (BY MR. LEASURE) Okay.</p> <p>10 A. That's primary. But anybody can be -- I've been</p> <p>11 noticed by claimants and everybody else on --</p> <p>12 Q. You're using the word "notice."</p> <p>13 You've been made aware of a claim, right?</p> <p>14 You're not noticed under the terms of an insurance policy.</p> <p>15 You're not using those interchangeably; are you?</p> <p>16 THE REPORTER: Can you slow down just a</p> <p>17 bit?</p> <p>18 MR. LEASURE: Okay. Sorry.</p> <p>19 A. There's no way I can avoid saying that I wasn't</p> <p>20 put on notice. If a claimant sends a letter to me through</p> <p>21 an attorney and says, You owe us \$1 million for whatever</p> <p>22 kind of claim, I can't say, Well, I didn't get notice from</p> <p>23 the policyholder, so I'm not going to do anything about</p> <p>24 it.</p> <p>25 Q. (BY MR. LEASURE) No. But in that case, it was</p>
<p style="text-align: right;">Page 203</p> <p>1 going all along here settling these claims and defending</p> <p>2 them.</p> <p>3 Q. (BY MR. LEASURE) That's right. No question</p> <p>4 that they would have a better chance of finding insurance</p> <p>5 program and policy information in 1977 than they would in,</p> <p>6 for instance, 2001 or 2009; is that correct?</p> <p>7 MR. BRENNAN: Objection.</p> <p>8 A. That's right.</p> <p>9 Q. (BY MR. LEASURE) Okay. And so it's your</p> <p>10 testimony, it's your opinion that good claims handling</p> <p>11 practices in 1977 would have been to do some further</p> <p>12 additional different investigation than what was done by</p> <p>13 Pacific Employers in this case?</p> <p>14 A. Yes.</p> <p>15 MR. BRENNAN: Objection.</p> <p>16 Q. (BY MR. LEASURE) And it's your opinion that it</p> <p>17 was their duty to notice those carriers of any potential</p> <p>18 claims?</p> <p>19 A. It's their duty to find out if there's any</p> <p>20 additional coverage, because they're defending their</p> <p>21 policyholder, and that's part of the defense, is to find</p> <p>22 out whether their excess -- they put excess people on</p> <p>23 notice. And they should have made a determination about</p> <p>24 Unigard. They had Unigard there, and they should have</p> <p>25 been able to get some more information from them, or at</p>	<p style="text-align: right;">Page 205</p> <p>1 an insure -- it was a lawyer --</p> <p>2 A. Sometimes it is.</p> <p>3 Q. -- on behalf of the policyholder, right; that</p> <p>4 was your example?</p> <p>5 A. Not on behalf of a policyholder, but on behalf</p> <p>6 of a claimant.</p> <p>7 Q. Okay. Who had a policy written by you?</p> <p>8 A. No. You're saying that the only primary is that</p> <p>9 notice is from the policyholder. And I'm saying you get</p> <p>10 notices from everybody. You get notices from claimants;</p> <p>11 you get notices from attorneys; you get notices from the</p> <p>12 agents; you get notices from the policyholder. I mean,</p> <p>13 there's all kinds of -- you can't ignore them and say,</p> <p>14 Well, wait a minute. We didn't get notice from the</p> <p>15 policyholder, although you got notice from an attorney</p> <p>16 over here that a claimant is injured.</p> <p>17 Q. Are you going to testify here or offer an</p> <p>18 opinion about what a late notice argument would be?</p> <p>19 A. Late notice? No.</p> <p>20 Q. Yeah. In other words, that I didn't get notice.</p> <p>21 Is anybody in this case arguing that they</p> <p>22 didn't get notice of the claim?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. And that's what you're talking about. You're</p> <p>25 talking about notice of the claim, right? You're not</p>

<p style="text-align: right;">Page 206</p> <p>1 talking about an obligation of an insurance company to 2 notice another insurance company of a claim? 3 You're not saying that's in the policy 4 anywhere; are you? 5 A. I'm saying that if you have notice of a claim 6 from anywhere, from the policyholder, from the agent, or 7 from the claimant, then you have an obligation to make an 8 investigation and see whether or not you should place 9 other carriers, excess carriers, on notice or other people 10 before you, particularly when you're talking about 11 long-tail cases. 12 Q. Right. And you say that that's contained in the 13 duty to defend; that's where it's -- that's where it is in 14 the policy? 15 MR. BRENNAN: Objection. 16 A. Of course. 17 MR. LEASURE: Let's take five minutes. 18 (Recess in the proceedings from 3:25 to 19 3:34 p.m.) 20 Q. (BY MR. LEASURE) Mr. O'Malley, I just have a 21 couple of more questions. I'm going to turn it over to 22 Mr. Fox, and, hopefully -- hopefully, be done. I can't 23 guarantee that I won't come back with a question or two. 24 But let me direct your attention to page 5 25 of your report, which is Exhibit 2.</p>	<p style="text-align: right;">Page 208</p> <p>1 and Hartford refused to investigate the insurance history? 2 When is that? 3 A. Well, from the time of that Pennell claim up to 4 2009 or whatever the demand for the pro rata share is. 5 Q. Okay. And you go on to say that they refused, 6 despite Troy Belting's repeated requests? 7 A. Yes. 8 Q. And what are you referring to there? 9 A. The depositions I read -- I can't think -- 10 Barcum particularly, I think. 11 Q. And what did Mr. Barcum say? 12 A. That he had made requests that they do that; 13 make some -- make some inquiries and make some 14 investigation into the other carriers. 15 Q. And when did he do that? 16 A. I don't know. Right after he was noticed that 17 he needed -- was going to pay for it. 18 Q. Okay. So 2009 or so? 19 A. Yeah. After, yeah. 20 Q. Okay. 21 MR. LEASURE: I don't have any further 22 questions at this time. I'm going to turn it over to 23 Mr. Fox. I may be back for a question or two. 24 (Discussion held off the record 3:37 to 25 3:37 p.m.)</p>
<p style="text-align: right;">Page 207</p> <p>1 A. Okay. 2 Q. And in the third paragraph that says "beyond 3 this," do you see that? 4 A. Yeah. 5 Q. It says: Beyond this, PEIC and Hartford both 6 refuse to investigate the insurance history or to take any 7 steps necessary -- pardon me. Let me back up and start 8 over; I misread. 9 Beyond this, PEIC and Hartford both refuse 10 to investigate the insurance history or to take any steps 11 to preserve Troy Belting's rights against any such 12 carriers, despite Troy Belting's repeated requests. 13 Do you see that? 14 A. Yes. 15 Q. Okay. And it's your opinion that Hartford and 16 PEIC refused to the investigate insurance history in this 17 case? 18 A. What I saw of the depositions of Barcum and some 19 of the others that they had asked. 20 Q. Okay. But you're not referring, for instance, 21 to the investigation that was undertaken during the 22 Pennell claim that we looked at before? 23 A. Well, I don't think I'm referring specifically 24 to Pennell, no. 25 Q. Are you referring to any specific time that PEIC</p>	<p style="text-align: right;">Page 209</p> <p>1 (Examination was concluded at 3:37 p.m., 2 and Examination began. 3 EXAMINATION 4 BY MR. FOX: 5 Q. Okay. Good afternoon, Mr. O'Malley. I'm Brian 6 Fox; we met earlier. I represent the Plaintiff, Pacific 7 Employers Insurance Company, in this case. 8 I'll be asking you some questions, okay? 9 A. All right. 10 Q. Do you know who Bernd Heinze is, also known as 11 Bernie Heinze? 12 A. Oh, you mean the expert? Yes, yes. 13 Q. And who is Mr. Heinze? 14 A. Pardon me? 15 Q. Who is he, to your knowledge? 16 A. He was an expert employed by Hartford and PEIC 17 and maybe Unigard. 18 MR. KOTULA: Nope. 19 Q. (BY MR. FOX) Right. He was retained -- just 20 to be clear on the record, he was retained only on behalf 21 of Pacific Employers Insurance Company and Hartford. 22 And by the way, is it correct that if I say 23 Pacific Employers or PEIC, you'll know -- or you use those 24 terms, you'll know that they're interchangeable terms for 25 purposes of this deposition, right?</p>

<p style="text-align: right;">Page 210</p> <p>1 A. Right.</p> <p>2 Q. Okay. Had you heard of Mr. Heinze before your</p> <p>3 work on this case?</p> <p>4 A. No, I had not.</p> <p>5 Q. Okay. You testified a little while ago that you</p> <p>6 read Mr. Heinze' deposition testimony.</p> <p>7 Did you read his expert report issued in</p> <p>8 this case?</p> <p>9 A. Yeah, I read it. Not conversant with it.</p> <p>10 Q. And -- and why did you read it?</p> <p>11 A. Because it was attached to his deposition.</p> <p>12 Q. Okay. And why did you read his deposition?</p> <p>13 A. Because it was sent to me, and because it was in</p> <p>14 opposition to what I was saying, or most of it.</p> <p>15 Q. So it was sent to you by counsel, Mr. Brennan,</p> <p>16 or someone from his office?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And did your review of Mr. Heinze'</p> <p>19 deposition testimony or any of its exhibits, including Mr.</p> <p>20 Heinze' expert report, did they cause you to revisit or</p> <p>21 want to change anything in your expert report?</p> <p>22 A. Absolutely not.</p> <p>23 Q. Okay. Referring to your expert report, which</p> <p>24 has been marked as Exhibit 2, do you have that in front of</p> <p>25 you?</p>	<p style="text-align: right;">Page 212</p> <p>1 today. I mean...</p> <p>2 Q. Okay. We'll get back to that. And same -- same</p> <p>3 questions as to Hartford.</p> <p>4 Did you read any of The Hartford insurance</p> <p>5 policies issued to Troy Belting that are at issue in this</p> <p>6 case?</p> <p>7 A. No.</p> <p>8 Q. And if I were to ask you that same other</p> <p>9 question, do you plan to offer any opinions on what those</p> <p>10 Hartford policies require Hartford to do in this case,</p> <p>11 what is your answer to that?</p> <p>12 A. What it requires Hartford to do? We just went</p> <p>13 over the insurance agreement.</p> <p>14 Q. Okay. Now, so, is it your -- is it -- withdraw.</p> <p>15 So you plan to offer opinions in this case</p> <p>16 as to the Pacific Employers and Hartford insurance</p> <p>17 policies only to the extent of the insuring agreements in</p> <p>18 those policies?</p> <p>19 A. Yeah.</p> <p>20 Q. Okay. So is it fair to say that -- withdrawn.</p> <p>21 Other than the one Hartford policy that</p> <p>22 Mr. Leasure showed you just a short while ago today, which</p> <p>23 he marked as an exhibit, Exhibit 20, I believe, that's the</p> <p>24 first time you saw either a Hartford or a -- that's the</p> <p>25 first time you saw a Hartford policy issued to Troy</p>
<p style="text-align: right;">Page 211</p> <p>1 A. Yes.</p> <p>2 Q. Did you write it?</p> <p>3 A. Yes.</p> <p>4 Q. Did you write every word of it?</p> <p>5 A. Yes.</p> <p>6 Q. Did counsel assist you in any way in writing it?</p> <p>7 A. No.</p> <p>8 Q. Now, am I correct you've never underwritten an</p> <p>9 insurance policy; is that right?</p> <p>10 A. No. Like I testified earlier, I was in charge</p> <p>11 of the underwriting department for Union Standard, and I</p> <p>12 set the standards for what we were going to write and that</p> <p>13 sort of thing, but I was never a desk underwriter.</p> <p>14 Q. Is it fair, you never underwrote an insurance</p> <p>15 policy; is that fair?</p> <p>16 A. Well, almost. I mean, I -- no. To say I was an</p> <p>17 underwriter, no, I was not an underwriter.</p> <p>18 Q. Okay. And did you read any of the Pacific</p> <p>19 Employers insurance policies issued to Troy Belting that</p> <p>20 are at issue in this case?</p> <p>21 A. No.</p> <p>22 Q. And do you plan to offer any opinions on what</p> <p>23 those Pacific Employers policies require Pacific Employers</p> <p>24 to do in this case?</p> <p>25 A. Other than what I've already testified before,</p>	<p style="text-align: right;">Page 213</p> <p>1 Belting; is that correct?</p> <p>2 MR. BRENNAN: Objection.</p> <p>3 A. Yes.</p> <p>4 Q. (BY MR. FOX) Okay. And with respect to</p> <p>5 Pacific Employers, is it fair to say, then, that you</p> <p>6 intend to give opinions as to what the Pacific Employers</p> <p>7 policies require Pacific Employers to do without having</p> <p>8 ever looked at any of those Pacific Employers policies; is</p> <p>9 that right?</p> <p>10 MR. BRENNAN: Objection.</p> <p>11 A. I can give an opinion regarding what an</p> <p>12 insurance agreement is in any policy, in any comprehensive</p> <p>13 general policy, which includes Pacific Employers or</p> <p>14 Hartford or Unigard or anybody else's.</p> <p>15 Q. (BY MR. FOX) Okay. But it is accurate, is it</p> <p>16 not, that you intend to offer opinions as to the Pacific</p> <p>17 Employers policies, even though you've never looked at a</p> <p>18 Pacific Employers policy in this case, right?</p> <p>19 MR. BRENNAN: Objection.</p> <p>20 A. Giving an opinion about insuring agreements and</p> <p>21 comprehensive general liability and M&C policies about</p> <p>22 what the insuring agreement says in any policy and, in</p> <p>23 particular, the defense portion of that, we've discussed</p> <p>24 earlier today.</p> <p>25 Q. (BY MR. FOX) What you referred to a little</p>

<p style="text-align: right;">Page 214</p> <p>1 earlier is what you're referring to as the defense portion 2 of the insuring agreement; do I have that right? 3 A. Right, right. Yes. 4 Q. Okay, sorry. 5 But I'm going to have to ask you this 6 again, because I don't think I got an answer to this. 7 It is correct, isn't it, that based on what 8 you've testified, you plan to offer one or more opinions 9 about what the Pacific Employers policies obligate Pacific 10 Employers to do in this case without having ever looked at 11 any of those policies, right? 12 MR. BRENNAN: Objection. 13 A. I have not looked at the policies. I know what 14 the insuring agreement says; I've looked at it 100 times. 15 And it's the same in any -- in all the comprehensive 16 general liability policies. And I'm going to give 17 testimony about that. 18 Q. (BY MR. FOX) Now, do you have an 19 understanding, Mr. O'Malley, that in the context of a 20 lawsuit, it's for a judge or jury to determine the rights 21 and obligations of a policyholder and the carrier to one 22 another under their insurance policy, and not you? Would 23 agree with that? 24 A. Correct. 25 MR. BRENNAN: Objection.</p>	<p style="text-align: right;">Page 216</p> <p>1 may also be on this policyholder's coverage. And so when 2 that occurred, the timing -- but that's not manifested 3 until 2009, when they come and ask for coverage or for a 4 pro rata share of it. 5 So I don't know when it was. At that 6 point, we know that they didn't do it, because they didn't 7 have any information. They hadn't gone back. 8 Q. So if I understand your last answer, in your 9 opinion, if Pacific Employers had not asked for money from 10 Troy Belting in 2009, then you would be of the opinion 11 that Pacific Employers did not violate any duty; is that 12 right? 13 MR. BRENNAN: Objection. 14 A. Well, they hadn't violated if they haven't asked 15 for the money. I mean, when they asked the policyholder 16 for money, then you have to look at it and say, Well, why 17 are you asking in 2009 for claims back in the '70s and 18 '80s? Why didn't you do something back at that time to 19 find out who -- maybe some other carriers, that would be 20 involved? Now you're coming to them in 2009, and so 21 you're asking them for that information 25, 30 years 22 later. 23 And my testimony -- my opinion is, you 24 violated good claims practices by not doing that back in 25 1976/77, or whatever it was, all the way up to the point</p>
<p style="text-align: right;">Page 215</p> <p>1 Q. (BY MR. FOX) Now, you've testified that 2 Pacific Employers and Hartford violated a duty here; 3 that's what you're -- that's what you're opining, right? 4 A. Yes. 5 Q. Okay. When was the first time that took place, 6 either as Pacific Employers or Hartford or both? 7 MR. BRENNAN: Objection. 8 Q. (BY MR. FOX) You know what, let me break it up 9 with the objection. 10 When is the first time that, in your 11 opinion, Pacific Employers violated a duty here? 12 A. Well, I can't -- I can't pinpoint a date; I can 13 only pinpoint the fact that there were several cases that 14 were settled between '77 and 2009 in which they had an 15 opportunity to go back and look and see what the other 16 carriers are. I don't know what those dates are or when 17 those particular cases are or when they occurred. 18 Q. So other than the specific date -- I'm not 19 asking you for, you know, a month and day, but give me 20 some time frame, some time estimate, the best you can, as 21 to when, in your opinion, Pacific Employers first violated 22 a duty here. 23 A. Well, they violated a duty when the first claim 24 came in after Pennell, from '77 all the way up to 2009, by 25 not taking the opportunity at that time to find out who</p>	<p style="text-align: right;">Page 217</p> <p>1 of where they are asking for money and asking -- giving 2 percentages of how much they want on a particular claim 3 that they settled. 4 Q. (BY MR. FOX) And my question is: In your 5 opinion, if Pacific Employers had not asked Troy Belting 6 for money in 2009, would your opinion be that Pacific 7 Employers did not violate any duty? 8 MR. BRENNAN: Objection. 9 A. There wouldn't be any controversy. 10 Q. (BY MR. FOX) Okay. What's the answer -- 11 what's the answer to my question then? 12 A. Yeah. Well, no, there wouldn't have been any 13 controversy if they hadn't asked for it. I mean, why 14 would there be? But when they did ask for it in 2009, 15 then you have to say, Well, why didn't you do this back 16 20, 25 years ago? And then you would look into it, and 17 you'd say, Well, that's not good claims handling coming 18 back 30 years from now and asking for money that you could 19 have looked at and would have had a better opportunity or 20 better served the insured if you would have found out that 21 information or tried to find out that information back 30 22 years ago. 23 Q. So my question -- and we'll call it a 24 hypothetical, if that helps. 25 My question is: In your opinion, if -- if,</p>

55 (Pages 214 - 217)

<p style="text-align: right;">Page 218</p> <p>1 hypothetically, Pacific Employers had not asked Troy 2 Belting for any money in 2009, then would you agree that 3 your opinion would be that Pacific Employers did not 4 violate any duty?</p> <p>5 MR. BRENNAN: Objection.</p> <p>6 A. Would not be that, no. It would be who had 7 violated it. It just wouldn't have made -- wouldn't have 8 done anything to the policyholder, because they should 9 have done it back 30 years ago. And because it never 10 manifested until 2009, and then it did, then we go back 11 and say that they have.</p> <p>12 Q. (BY MR. FOX) So if this -- I'm going to keep 13 using that 2009 date that you're referring to.</p> <p>14 If that hadn't happened in 2009, then you 15 -- am I correct that you would have no reason to opine 16 that Pacific Employers violated a duty in around 1977; is 17 that correct?</p> <p>18 MR. BRENNAN: We wouldn't be here. There 19 would be no need -- go ahead.</p> <p>20 A. That's not what I said. What I said is that 21 they would have still not been good claim practices, but 22 there would have been no controversy, so there would be no 23 reason to say that they didn't have good claim practices.</p> <p>24 But when it was decided in 2009 that they 25 wanted some pro rata share, then you can find out that</p>	<p style="text-align: right;">Page 220</p> <p>1 your earlier testimony that if things had happened 30 2 years earlier, the parties might have located Unigard's 3 alleged coverage, they might have, they might not have, 4 that you're engaging in speculation in saying that? Is 5 that fair to say?</p> <p>6 MR. BRENNAN: Objection.</p> <p>7 A. I'm saying that they certainly would have had a 8 better chance of finding coverage, because we knew at the 9 time that Unigard might have had coverage because of the 10 testimony that they had in their own file, in the Pennell 11 file.</p> <p>12 Q. (BY MR. FOX) That who has in the Pennell file?</p> <p>13 A. Pacific Employers.</p> <p>14 Q. Okay. And those references, the ones to which 15 you just referred, that includes the INA representative 16 going to Troy Belting's broker, Nicoll & Chesney (sic) --</p> <p>17 MR. BRENNAN: MacChesney.</p> <p>18 Q. (BY MR. FOX) -- MacChesney and inquiring about 19 the alleged Unigard coverage, right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. I'd like to direct your attention to 22 paragraph 15 of your expert report, Exhibit 2, which is on 23 page 3. Please tell me when you're there.</p> <p>24 A. Page 5?</p> <p>25 Q. Page 3, actually.</p>
<p style="text-align: right;">Page 219</p> <p>1 they had done that. If there's no money exchanged or 2 there's no demand, nobody would have looked into it.</p> <p>3 Q. (BY MR. FOX) Now, is it possible or impossible 4 that sometime between 1977 and 2009, the applicable law 5 might have changed? Is that -- is that possible, the 6 applicable law governing Pacific Employers' rights to seek 7 money from Troy Belting?</p> <p>8 MR. BRENNAN: Objection.</p> <p>9 A. Are you talking about the manifestation clause 10 or the pro rata clause or whatever --</p> <p>11 Q. (BY MR. FOX) So in 1977, Pacific Employers did 12 not seek money from Troy Belting. I mean, I'm just going 13 to use these two dates that you've been using. Let me 14 stick with those.</p> <p>15 So 1977, Pacific Employers did not 16 expressly seek money from Troy Belting; and in 2009, they 17 did, right? Are you with me so far?</p> <p>18 A. Right.</p> <p>19 Q. Okay. Is it possible or impossible that during 20 that period of time, the law governing Pacific Employers' 21 right to seek money from Troy Belting changed; is that 22 possible that that happened?</p> <p>23 A. Sure.</p> <p>24 MR. BRENNAN: Objection.</p> <p>25 Q. (BY MR. FOX) Okay. Is it fair to say that</p>	<p style="text-align: right;">Page 221</p> <p>1 MR. BRENNAN: Paragraph 15.</p> <p>2 A. Oh, yes.</p> <p>3 Q. (BY MR. FOX) Paragraph 15; tell me when you're 4 there.</p> <p>5 A. Yes.</p> <p>6 Q. Let me read it aloud and make sure I get it 7 right, and then I'll ask you some questions on this.</p> <p>8 As this evidence pertains to PEIC, records 9 established that PEIC knew that Unigard Insurance Company 10 and/or its predecessor, Jamestown Mutual Insurance 11 Company, were Troy Belting's insurer for the term 12 described above since no later than December 1977.</p> <p>13 Did I read that correctly, Mr. O'Malley?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, let me direct your attention to that 16 first line there. As this evidence pertains to PEIC, 17 records establish that PEIC knew -- do you see that word 18 "knew"?</p> <p>19 A. Oh, okay.</p> <p>20 Q. And you see the end of the sentence. And take 21 additional time, if you'd like.</p> <p>22 But my first question is: What did you 23 mean when you wrote the word "knew" in there?</p> <p>24 A. Well, they knew because they had correspondence 25 with Unigard that they had some -- they had liability or</p>

<p style="text-align: right;">Page 222</p> <p>1 should have known that they had a liability policy.</p> <p>2 Q. I'm sorry; what did you say? That who knew or</p> <p>3 should have known?</p> <p>4 A. PEIC.</p> <p>5 Q. And what did or should PEIC have known in 1977?</p> <p>6 A. I think we've discussed that all afternoon about</p> <p>7 the correspondence it had with Jim Dixon and at Unigard.</p> <p>8 Q. My question is: What are you saying that PEIC</p> <p>9 knew or should have known in 1977 along these lines?</p> <p>10 A. They should have known that Unigard had</p> <p>11 coverage, liability coverage.</p> <p>12 Q. Okay. And when you write -- withdrawn.</p> <p>13 When you wrote in paragraph 15 that records</p> <p>14 established that PEIC knew, are you saying that in 1977,</p> <p>15 PEIC was -- was certain of that, was certain that Unigard</p> <p>16 or Jamestown was Troy Belting's liability insurer?</p> <p>17 MR. BRENNAN: Objection.</p> <p>18 A. I don't know if they were absolutely certain,</p> <p>19 but they certainly -- they had an opportunity to find out.</p> <p>20 Q. (BY MR. FOX) Okay.</p> <p>21 A. They were corresponding and even had phone</p> <p>22 conversations.</p> <p>23 Q. And this is -- this is what I want to follow up</p> <p>24 with you on right now.</p> <p>25 Are you saying that they knew, or are you</p>	<p style="text-align: right;">Page 224</p> <p>1 MR. BRENNAN: Objection.</p> <p>2 Q. (BY MR. FOX) Do you have --</p> <p>3 MR. FOX: Let me finish my question first.</p> <p>4 MR. BRENNAN: Sorry.</p> <p>5 Q. (BY MR. FOX) Let me ask you: Do you have an</p> <p>6 understanding that, as we sit here today, Troy Belting is</p> <p>7 certain that Unigard or Jamestown was Troy Belting's</p> <p>8 liability insurer?</p> <p>9 MR. BRENNAN: Objection.</p> <p>10 A. They knew that they had insurance through the</p> <p>11 agent with Jamestown. I have no idea what they knew that</p> <p>12 they had, because, apparently, they didn't have any</p> <p>13 policies.</p> <p>14 Q. (BY MR. FOX) By the way, when you say "they</p> <p>15 knew," you're referring to Troy Belting?</p> <p>16 A. Troy Belting.</p> <p>17 Q. Okay. So they knew that based on the dealings</p> <p>18 with Nicoll & MacChesney back in the 1970s, right?</p> <p>19 A. Right.</p> <p>20 Q. Okay. Paragraph 11; if you could turn your</p> <p>21 attention to that, please. I'm going to read it.</p> <p>22 In each of the underlying asbestos cases,</p> <p>23 PEIC and Hartford has asserted that Troy Belting or its</p> <p>24 prior insurance carriers are liable for a, quote, pro rata</p> <p>25 share, unquote, of the defense and indemnity payments made</p>
<p style="text-align: right;">Page 223</p> <p>1 saying that they should have known?</p> <p>2 A. I'm saying that they probably knew.</p> <p>3 Q. Okay. So now it's -- you're no longer saying,</p> <p>4 as it's reflected in your report, that PEIC knew. Now</p> <p>5 you're saying that PEIC probably knew; is that right?</p> <p>6 A. Well, they knew --</p> <p>7 MR. BRENNAN: Objection.</p> <p>8 A. -- because they were corresponding with Unigard,</p> <p>9 and Unigard was asking them questions. So they -- if they</p> <p>10 didn't know, they should have known that they had</p> <p>11 coverage, because they were talking about liability. They</p> <p>12 weren't talking about compensation.</p> <p>13 Q. (BY MR. FOX) Okay. And as we sit here today,</p> <p>14 does Troy Belting know that Unigard or Jamestown was ever</p> <p>15 Troy Belting's liability insurer?</p> <p>16 MR. BRENNAN: Objection.</p> <p>17 A. Did who know that?</p> <p>18 Q. (BY MR. FOX) Troy Belting. Does Troy Belting</p> <p>19 know that Unigard or Jamestown was Troy Belting's</p> <p>20 liability insurer?</p> <p>21 MR. BRENNAN: Objection.</p> <p>22 A. Yeah. Well, they knew that Jamestown or Unigard</p> <p>23 was, yes. They knew they had them for several years.</p> <p>24 Q. (BY MR. FOX) Okay. And are they certain of</p> <p>25 that?</p>	<p style="text-align: right;">Page 225</p> <p>1 in these underlying asbestos cases.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Mr. O'Malley, in your opinion, should a</p> <p>5 policyholder ever have to pay its fair share of indemnity</p> <p>6 payments in accordance with applicable law?</p> <p>7 MR. BRENNAN: Object to the form.</p> <p>8 A. Yes, if that's the law.</p> <p>9 Q. (BY MR. FOX) If that's the applicable law --</p> <p>10 if the applicable law requires a policyholder to pay its</p> <p>11 fair share of, let's say, indemnity, then they should have</p> <p>12 to do that, right?</p> <p>13 A. That's right.</p> <p>14 Q. Paragraph 13 now. I'm going to read it again.</p> <p>15 I mean, I'm going to read it.</p> <p>16 On several occasions, Troy Belting or its</p> <p>17 agents requested that PEIC and Hartford help it</p> <p>18 investigate its older insurance carriers and help it</p> <p>19 preserve its rights under older insurance policies. PEIC</p> <p>20 and Hartford declined to perform these functions and never</p> <p>21 placed Unigard/Jamestown on notice of any underlying</p> <p>22 asbestos claims.</p> <p>23 Did I read that correctly?</p> <p>24 A. Right.</p> <p>25 Q. Okay. As to the first sentence -- actually, as</p>

<p style="text-align: right;">Page 226</p> <p>1 to the first clause, on several occasions -- and feel free 2 to take time before you answer; read more of 13, if you'd 3 like. 4 My question is: The reference at the 5 beginning of that -- of number 13 to "on several 6 occasions," when was the first such occasion? 7 MR. BRENNAN: Objection; asked and 8 answered. 9 A. As far as I can recall, it's after 2009. 10 Q. (BY MR. FOX) Okay. Other than what you've 11 testified to thus far today, do you plan to offer any 12 opinions concerning any of the terms of any of the Pacific 13 Employers insurance policies at issue in this case? 14 MR. BRENNAN: Objection to form. 15 A. Other than what I've already testified to about 16 the insuring agreement that, in my experience, I know what 17 it is and I know what it says, that's all. 18 Q. (BY MR. FOX) Okay. You don't plan to offer 19 opinions about anything else in the Pacific Employers 20 policies, other than what you just said, right? 21 A. Right. 22 Q. Same question for Hartford. I'll repeat it, if 23 you'd like. 24 A. Yes. 25 Q. Same answer?</p>	<p style="text-align: right;">Page 228</p> <p>1 insurance policies. 2 Did I say that roughly correctly? 3 A. Well, actually, I think what I said was the 4 policyholder, the insured, and the other carriers that 5 might be involved. 6 Q. I'm sorry. Who's in the team approach? I 7 thought you said policyholder and insured. Would you mind 8 repeating who's -- 9 A. Policyholder, the insurance carrier, and any 10 insurance company that might be involved. 11 Q. Insurance carrier and insurance company, are you 12 drawing some distinction there? 13 A. No. Policyholder, agent, and the insurance 14 company. 15 Q. Okay. And here, you've testified -- am I 16 correct -- that Troy Belting -- you testified that Troy 17 Belting should have -- withdrawn. 18 Am I correct that you testified that Troy 19 Belting should not have -- should not have discarded its 20 policies, right? 21 MR. BRENNAN: Objection. 22 A. Well, at that point in time in history, most of 23 the carriers -- most insureds did. They didn't want to 24 stack them around. Now you come back and say, Well, yeah, 25 they shouldn't have. But, I mean, I don't know if that</p>
<p style="text-align: right;">Page 227</p> <p>1 MR. BRENNAN: Objection. 2 A. Yes. 3 MR. BRENNAN: I'm going to object to this. 4 Q. (BY MR. FOX) Okay. Well, let me ask it. I'm 5 not sure what counsel's objection is to. Let me put it on 6 the record then. 7 So the same question as to Hartford: Other 8 than what you've testified to today, do you plan to offer 9 any testimony about any of the terms of any of The 10 Hartford policies at issue? That's the question. 11 MR. BRENNAN: Objection. 12 A. Other than what I've already testified about the 13 insuring agreement and the defense of the insuring 14 agreement -- 15 Q. (BY MR. FOX) Other than that, no? 16 A. Yes, nothing other than that. 17 Q. Okay. Did you ever speak with anyone that you 18 believed to have ever been affiliated with Troy Belting? 19 A. No. 20 MR. BRENNAN: Objection. 21 Q. (BY MR. FOX) We heard your testimony and then 22 there was some follow-up questions on the -- correct me if 23 I'm missphrasing this; I don't mean to -- the team 24 approach that it's the responsibility of the broker and 25 the insurer and the party seeking coverage to locate</p>	<p style="text-align: right;">Page 229</p> <p>1 was in violation of anything at that time -- at that point 2 in time. 3 Q. (BY MR. FOX) Your testimony is that most of 4 the insureds in the 1970s discarded insurance policies? 5 A. Well, not most of them, but a lot of them did 6 because they had no need for them anymore, and they had no 7 idea about this long-tail stuff. When the policy period 8 was over, they got a new one. 9 Q. So it's your testimony -- when I say 10 "occurrence-based policies," do you know what I'm 11 referring to? 12 A. Yeah. 13 Q. It's your testimony that -- that when a -- that 14 there's nothing wrong with a policyholder discarding their 15 occurrence-based insurance policies? 16 MR. BRENNAN: Objection. 17 A. Nothing wrong at the time, of course. But 18 looking back, it certainly would have helped if they had 19 kept them. But, I mean, that's, you know, something they 20 didn't know at the time. That's why they have insurance 21 archaeological firms that go back. There are many, many, 22 many that have done that. 23 Q. (BY MR. FOX) By the way, when you say "of 24 course," it's certainly not obvious to me. I have a lot 25 other -- a lot of other cases in which -- and</p>

<p style="text-align: right;">Page 230</p> <p>1 policyholders do not generally discard insurance policies.</p> <p>2 But you don't find any fault at all in Troy</p> <p>3 Belting discarding its insurance policies; is that right?</p> <p>4 MR. BRENNAN: Objection, form.</p> <p>5 A. Well, I just said, you know, it would have been</p> <p>6 better if they hadn't, but there's nothing they can -- it</p> <p>7 was their belief at the time that there wasn't any need to</p> <p>8 keep them. So, I mean, it would be nice if they had them.</p> <p>9 Q. (BY MR. FOX) And how do you know that that was</p> <p>10 their belief at the time?</p> <p>11 A. Because they got rid of them. That's what they</p> <p>12 said. They said they got rid of them at the end of the</p> <p>13 policy periods. That's what they testified to.</p> <p>14 Q. Okay. That's the sole basis of your belief?</p> <p>15 A. That's what they said, yeah.</p> <p>16 Q. Okay. And -- but is it fair to say that Troy</p> <p>17 Belting discarding these insurance policies, that that was</p> <p>18 not a good practice; is that fair to say?</p> <p>19 MR. BRENNAN: Objection.</p> <p>20 A. Looking back, it certainly wasn't, no.</p> <p>21 Q. (BY MR. FOX) But at the time, you think that</p> <p>22 was just fine?</p> <p>23 A. It was for them. But, you know, I wouldn't have</p> <p>24 done it. I wouldn't have thought about doing it. But, I</p> <p>25 mean, they did it. No, it wasn't a good practice, but, I</p>	<p style="text-align: right;">Page 232</p> <p>1 Q. (BY MR. FOX) And the "carriers" is referring</p> <p>2 to Pacific Employers and Hartford?</p> <p>3 A. And Unigard.</p> <p>4 Q. Okay. So I'm sorry; what part of my question</p> <p>5 are you taking issue with?</p> <p>6 A. I'm not exactly sure what you're asking me.</p> <p>7 Q. So you earlier described this -- am I correct in</p> <p>8 characterizing it as a "team approach"; was that your</p> <p>9 phrase?</p> <p>10 A. Right.</p> <p>11 Q. Okay. And just to summarize, since I've been</p> <p>12 questioning you, you find fault with all of the parties to</p> <p>13 this team approach in --</p> <p>14 MR. BRENNAN: Objection.</p> <p>15 MR. FOX: Let me finish.</p> <p>16 MR. BRENNAN: Okay.</p> <p>17 Q. (BY MR. FOX) -- in terms of what they should</p> <p>18 have done with respect to Troy Belting's insurance</p> <p>19 policies?</p> <p>20 MR. BRENNAN: Objection.</p> <p>21 A. Yes. I find -- you know, it would have been</p> <p>22 nice if Troy Belting kept them; it would have been nice if</p> <p>23 the agent had kept them; it would have been nice if the</p> <p>24 carriers had done some. And at that time, most carriers</p> <p>25 were microfiching most of their policies before they were</p>
<p style="text-align: right;">Page 231</p> <p>1 mean, they did it.</p> <p>2 Q. Okay. And you testified also, am I correct,</p> <p>3 that the broker should have held on to the Troy Belting</p> <p>4 insurance policies; is that correct?</p> <p>5 MR. BRENNAN: Objection.</p> <p>6 A. I would have thought they would have made some</p> <p>7 record of it. I mean, they didn't have to have the</p> <p>8 physical policy. All we had to have is the deck page and</p> <p>9 the policy period. That's all they need to keep.</p> <p>10 Q. (BY MR. FOX) And as far as you could tell,</p> <p>11 that was not done here?</p> <p>12 A. As far as I know, it wasn't.</p> <p>13 Q. Okay. And we've heard testimony that you also</p> <p>14 find fault with Pacific Employers and Hartford in not</p> <p>15 doing what you've opined they should have done in that</p> <p>16 regard, right?</p> <p>17 A. What, in going back and looking at them?</p> <p>18 Q. Yes.</p> <p>19 A. Yeah.</p> <p>20 Q. So in your view, all members of the team, the</p> <p>21 policyholder, the broker, the carriers, all of them did</p> <p>22 not act as you would have liked to have seen, right?</p> <p>23 MR. BRENNAN: Objection.</p> <p>24 A. Well, I don't know about the carrier, because we</p> <p>25 never did find out.</p>	<p style="text-align: right;">Page 233</p> <p>1 destroying them.</p> <p>2 Q. (BY MR. FOX) The entire team dropped the ball;</p> <p>3 fair to say?</p> <p>4 MR. BRENNAN: Objection.</p> <p>5 A. We don't know. Nobody went back and looked</p> <p>6 specifically with the carriers. We know that -- we know</p> <p>7 specifically that -- and I don't know if the agent got rid</p> <p>8 of all of his or not. I don't know that I saw any</p> <p>9 testimony on that.</p> <p>10 Q. (BY MR. FOX) You testified that the broker</p> <p>11 should not have discarded Troy Belting's policies, and you</p> <p>12 haven't seen any indication that the broker kept the</p> <p>13 policies; is that --</p> <p>14 A. Or has destroyed them, either one. I don't</p> <p>15 know. They obviously had something when they put Unigard</p> <p>16 on notice.</p> <p>17 Q. When who put Unigard on notice?</p> <p>18 A. The agent.</p> <p>19 Q. Just one minute.</p> <p>20 Okay. I'd ask you to turn -- still on your</p> <p>21 expert report, Exhibit 2. Ask you to turn to page 4, the</p> <p>22 very first part under the opinions heading on page 4.</p> <p>23 Just tell me when you're there, please.</p> <p>24 Are you there?</p> <p>25 A. Yeah.</p>

<p style="text-align: right;">Page 234</p> <p>1 Q. You've heard this -- I think you even read this 2 today, but let me do it again briefly; just the first two 3 sentences underneath "opinions." 4 Claims handling entails the fulfillment of 5 the insurance company's promises to its insureds as stated 6 in the insurance policy. When handling a claim on behalf 7 of an insured, the claim staff of an insurance carrier 8 must do everything possible to protect the interests of 9 the insured in defending against loss related to the 10 claim. 11 Did I read that correctly? 12 A. Yes. 13 Q. Now -- and this is your opinion, correct? 14 A. Right. 15 Q. Okay. And when you opine that the claim staff 16 of insurance carrier must do everything possible, you're 17 seeking to impose on the carrier a legal requirement; 18 isn't that true? 19 MR. BRENNAN: Objection. 20 A. Through the contract. 21 Q. (BY MR. FOX) I'm sorry? 22 A. Through the contract they had with the 23 policyholder, yeah. 24 Q. When you say "through the contract with the 25 policyholder," you're referring to the insurance policy?</p>	<p style="text-align: right;">Page 236</p> <p>1 (The requested portion was read.) 2 A. Yes. With my other -- 3 MR. BRENNAN: Objection to the -- 4 MR. FOX: Let the witness answer first, 5 please. 6 MR. BRENNAN: All right. 7 A. Well, no. It's -- it's good claim handling. 8 It's not -- it's good claim handling practices to do that, 9 when I said you can put everybody else on notice, the 10 excess, concurrent, or whoever else. 11 Q. (BY MR. FOX) So I was trying to short circuit 12 this, but I'm afraid -- I don't understand why you can't 13 answer yes or no. So I need to ask the court reporter to 14 read it back again. 15 MR. BRENNAN: Objection to continuing to 16 ask the same question, but go ahead. 17 (The requested portion was read.) 18 A. Yes. 19 Q. (BY MR. FOX) Okay. 20 MR. FOX: No further questions. Thank you. 21 MR. LEASURE: I don't have anything 22 further. 23 MR. KOTULA: Nor I. 24 MR. BRENNAN: Anyone on the phone? 25 MS. CRUMMEY: No.</p>
<p style="text-align: right;">Page 235</p> <p>1 A. Right. 2 Q. And you're referring to what you've testified to 3 previously today, I think, the defense portion of the 4 insuring agreement, right? 5 A. Right. 6 Q. Any other portion of the insurance policy? 7 A. No. 8 Q. Okay. And -- 9 A. Well, accepted claims practices is what's 10 involved in the defense part of the insuring agreement. 11 Q. And just so we're clear, this is a requirement 12 the -- about the carrier must do everything possible. 13 That is a requirement that you believe is derived from the 14 defense portion of the insuring agreement, right? 15 A. Well, what does the policyholder pay a premium 16 for? He pays for defense in the matter if he has a claim 17 against him. You have a claim against him, the insurance 18 carrier must do everything they can to help him or defend 19 him in that matter, and that goes on to notifying other 20 carriers, concurrent carriers, excess carriers, previous 21 carriers in trying to make a determination if the 22 policyholder has more limits somewhere. 23 Q. So I'm going to ask the court reporter to read 24 it back. If you could answer with a yes or no, I'd like 25 you to.</p>	<p style="text-align: right;">Page 237</p> <p>1 MS. SCHABERG: No. 2 MS. YOUNG: No. 3 MR. BRENNAN: All right. I think we're 4 good. 5 (Deposition concluded at 4:15 p.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 238</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: JAMES E. O'MALLEY, JR.</p> <p>3 DATE OF DEPOSITION: JANUARY 26, 2016</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	<p style="text-align: right;">Page 240</p> <p>1 IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK</p> <p>2</p> <p>3 PACIFIC EMPLOYMENT INSURANCE) COMPANY,) Plaintiff,)</p> <p>4)</p> <p>5 -against-) NO. 1:11-CV-0912(TJM/RFT)</p> <p>6)</p> <p>7 TROY BELTING & SUPPLY COMPANY.) THE HARTFORD INSURANCE COMPANY) AND ABC COMPANIES 1 THROUGH)</p> <p>8 20,) Defendants.)</p> <p>9</p> <p>10 TROY BELTING & SUPPLY COMPANY,)</p> <p>11) Third-Party Plaintiff,)</p> <p>12)</p> <p>13 -against-))</p> <p>14 UNIGARD INSURANCE COMPANY,) QBE AMERICAS, INC., THE)</p> <p>15 TRAVELERS COMPANIES, INC.,) CNA FINANCIAL CORPORATION,)</p> <p>16 FIREMAN'S FUND INSURANCE) COMPANY, THE NORTH RIVER)</p> <p>17 INSURANCE COMPANY, CRUM &) FORSTER HOLDINGS CORP.,)</p> <p>18 LIBERTY MUTUAL GROUP, INC.,) HARLEYSVILLE GROUP, INC.,)</p> <p>19 HARLEYSVILLE INSURANCE) COMPANY, HARLEYSVILLE)</p> <p>20 INSURANCE COMPANY OF NEW YORK,) BERKSHIRE MUTUAL INSURANCE)</p> <p>21 GROUP,))</p> <p>22 Third-Party Defendants.)</p> <p>23 REPORTER'S CERTIFICATION</p> <p>24 ORAL DEPOSITION OF JAMES E. O'MALLEY, JR.</p> <p>25 JANUARY 26, 2016</p>
<p style="text-align: right;">Page 239</p> <p>1 I, JAMES E. O'MALLEY, JR., have read the</p> <p>2 foregoing deposition and hereby affix my signature that</p> <p>3 same is true and correct, except as noted above.</p> <p>4</p> <p>5 _____</p> <p>6 JAMES E. O'MALLEY, JR.</p> <p>7</p> <p>8</p> <p>9 THE STATE OF _____)</p> <p>10 COUNTY OF _____)</p> <p>11</p> <p>12 Before me, _____, on this day personally</p> <p>13 appeared JAMES E. O'MALLEY, JR., known to me (or proved to</p> <p>14 me under oath or through _____) (description</p> <p>15 of identity card or other document) to be the person whose</p> <p>16 name is subscribed to the foregoing instrument and</p> <p>17 acknowledged to me that they executed the same for the</p> <p>18 purposes and consideration therein expressed.</p> <p>19 Given under my hand and seal of office this ____</p> <p>20 day of _____, 2016.</p> <p>21</p> <p>22 _____</p> <p>23 NOTARY PUBLIC IN AND FOR</p> <p>24 THE STATE OF _____</p> <p>25</p>	<p style="text-align: right;">Page 241</p> <p>1 I, Kathryn R. Baker, RPR, a Certified Shorthand</p> <p>2 Reporter in and for the State of Texas, hereby certify to</p> <p>3 the following:</p> <p>4 That the witness, JAMES E. O'MALLEY, JR., was</p> <p>5 duly sworn by the officer and that the transcript of the</p> <p>6 oral deposition is a true record of the testimony given by</p> <p>7 the witness;</p> <p>8 That the deposition transcript was submitted on</p> <p>9 the 5th day of February, 2016 to the witness or to the</p> <p>10 attorney for the witness for examination, signature and</p> <p>11 return by the 7th day of March, 2016;</p> <p>12 That the amount of time used by each party at</p> <p>13 the deposition is as follows:</p> <p>14 Mr. Michael A. Kotula (03:40:52)</p> <p>Mr. Charles E. Leasure, III ... (00:49:21)</p> <p>15 Mr. Brian Fox (00:37:51)</p> <p>Mr. Timothy S. Brennan (00:00:00)</p> <p>16 Ms. Carol Crummey (00:00:00)</p> <p>Ms. Margriet Schaberg (00:00:00)</p> <p>17 Ms. Joanna L. Young (00:00:00)</p> <p>18 That pursuant to information given to the</p> <p>19 deposition officer at the time said testimony was taken,</p> <p>20 the following includes all counsel for parties of record:</p> <p>21 Mr. Brian Fox, Attorney for the PLAINTIFF</p> <p>Mr. Timothy S. Brennan, Attorney for the</p> <p>22 DEFENDANT/THIRD-PARTY PLAINTIFF, TROY BELTING & SUPPLY</p> <p>COMPANY AND THE WITNESS</p> <p>23 Mr. Michael A. Kotula, Attorney for the</p> <p>DEFENDANTS, UNIGARD INSURANCE COMPANY AND QBE AMERICAS,</p> <p>24 INC.</p> <p>Mr. Charles E. Leasure, III, Attorney for the</p> <p>25 DEFENDANTS, HARTFORD ACCIDENT & INDEMNITY COMPANY,</p>

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1 HARTFORD CASUALTY INSURANCE COMPANY, AND HARTFORD
INSURANCE COMPANY

2 Ms. Carol Crummey, Attorney for the THIRD-PARTY
DEFENDANTS, THE NORTH RIVER INSURANCE COMPANY AND CRUM &
3 FORSTER HOLDING CORP.

Ms. Margriet A. Schaberg, Attorney for the FOR
4 THE THIRD-PARTY DEFENDANTS, HARLEYSVILLE GROUP, INC.,
HARLEYSVILLE INSURANCE COMPANY, HARLEYSVILLE INSURANCE
5 COMPANY OF NEW YORK, AND BERKSHIRE MUTUAL INSURANCE GROUP
Ms. Joanna L. Young, Attorney for the

6 THIRD-PARTY DEFENDANT, CONTINENTAL CASUALTY COMPANY

7 I further certify that I am neither counsel for,
8 related to, nor employed by any of the parties or
9 attorneys in the action in which this proceeding was
10 taken, and further that I am not financially or otherwise
11 interested in the outcome of the action.

12 That \$_____ is the deposition officer's
13 charges to the Defendants, Unigard Insurance Company and
14 QBE Americas, Inc., for preparing the original deposition
15 transcript and any copies of exhibits;

16 Certified to by me this 5th day of February,
17 2016.

18

19



KATHRYN K. BAKER, RPR, CSR #6955

20 Expiration Date: 12/31/16

Veritext Legal Solutions

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.